



सर्व शिक्षा अभियान

सब पढ़ें सब बढ़ें

C-3329726

फाइल नं०

File No.

1/27/91 - Public

खण्ड

Volume

III

भारत सरकार

GOVERNMENT OF INDIA

गृह मंत्रालय

MINISTRY OF HOME AFFAIRS

अनुभाग

SECTION

PUBLIC

पत्राचार

CORRESPONDENCE

को सूचीकृत की गई

Indexed on

आद्याक्षर

Initials

अभिलेख क/ख

Record A/B

अभिलेख ग में नष्ट गए

Record C Destroyed In

नोट किया जाए

नोट न किया जाए अनुभागीया नोट बुक

To be noted

In Sectional Note Book

Not to be noted

अनु. अ./अधीक्षक के हस्ताक्षर

Initials of S.O./Supdt

लिपिक के हस्ताक्षर

Initials of clerk

विषय

SUBJECT

Bharat Ratna Award to Netaji Subhas Chandra Bose - Writ in Supreme Court Case No. 628/94 (Shri Bijan Ghosh & Others Vs. UOI)

Transfer Petition

Noting 1 to 34

Correspondence 1 to 189

Total: 223

पिछले हवाले

Previous References

बाद के हवाले

Later References

Keep

15/12/11



फाइल सं०

File No.

1/27/91-Public

खण्ड

Volume

III

भारत सरकार

GOVERNMENT OF INDIA

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Section

Public

टिप्पणियां/पत्राचार

NOTES/CORRESPONDENCE

विषय

SUBJECT

BHARAT RATNA AWARD to
NETAJI SUBHAS CHANDRA BOSE-
WRIT in SUPREME COURT.

CASE NO: 628/94

[Sh BIRON Ghosh & others Vs U.O.I.]

में नष्ट गए

destroyed in

अनुभागीया नोट बुक

जाए

in Sectional Note Book

oted

क्षक के हस्ताक्षर

O./Supdt.

क्षर

erk

TRANSFER PETITION

पिछले हवाले

Previous References

बाद के हवाले

Later References

PART FILE NO.1/27/91-Public

<u>S.NO.</u>	<u>BRIEF CONTENTS & PAGE NO.</u>	<u>REMARKS</u>
1.	Copy of the order in Civil Writ Petition No.902/1984 filed in the High Court of Judicature for Rajasthan, Jaipur by Nand Lal Sharma versus State Secretary, State of Rajasthan and another (Slip 'J').	
2.	Communication (Slip 'H') dated 22nd October, 1993 parawise comments (Slip 'E') in response to the affidavit of added Respondent, Dr. Susanta Kumar Mitra.	
3.	Communication dated 19-11-1993 (received on 22-11-1993) forwarding affidavit-in-opposition filed by Shri Bijan Ghosh against the privilege petition of Home Secretary. (F.R.-I).	Parawise comments sent on 26th November, 1993, to Shri S.K. Kundu both by fax and by Speed Post (Slip 'K').
4.	<u>Affidavit-in-Opposition to the affidavit filed by Dr. Susanta Kumar Mitra, added Respondent (received in the Ministry on 30-11-1993).</u>	A copy of green sheet along with spare copies duly sworn in being sent for filing in the Calcutta High Court.
5.		
5.	<u>Supplementary affidavit filed by Dr. Susanta Kumar Mitra, added Respondent (received in the Ministry on 30-11-1993).</u>	Parawise comments are under preparation in respect of IS-Division.
6.	<u>Amended Writ Petition filed by Shri Bijan Ghosh (received in the Ministry on 30-11-1993).</u>	Parawise comments are under preparation in respect of IS-Division.

anything from Shri Kundu whether any developments took place for 2nd August, 1993.

2. Parawise comments in respect of the petitions of the added petitioners, supplementary petition by Shri Bijan Ghosh and on the application for an ad-interim injunction have been prepared and are placed below (DFAs I to IV). After these parawise comments have been seen and approved, the same will also be forwarded to Shri Kundu for undertaking necessary follow up action.

3. A perusal of these added petitions would indicate that the thrust of these petitions as also the earlier main petition of Shri Bijan Ghosh is basically on the aspect of death of Netaji Subhash Chander Bose and as such various original relevant records demanded by the Petitioner/co-Petitioners viz. the book published by Prof. Samar Guha, papers relating to the 'Transfer of Power - 1942-47' and various other documents referred in the Reports of the Netaji Inquiry Committee and Khosla Commission would have to be produced, presented and contested by the IS Division.

Submitted.

V.P. Bhatia

(V.P. Bhatia)
Under Secretary/5-8-1993.

10/8

Director (O&M & Vig.)

J.S. (S)

I have gone through
the four drafts and
made some modifications.
These may be forwarded
immediately to Shri
Kundu.

Further course of action
may please be discussed.

14.8.93

14.8.93

Dir (O&M/Vig.)

15 (Kud)

1816/AYC/5-8/93
10/8

4203/55(A)/93
10/8

*Original
Notes from
pp. 22 to 28 in
Vol. I of the
Calculation - Case
File.
Thereafter, Vol. II
starts -*

*Pl. in 1994
the result
16/8
16/8
16/8*

S. No. 26 & 27 (Issued) 21-2-1993

S.No.28(Receipt) F.R.

The four drafts in respect of the petitions by the added Petitioners; the supplementary Affidavit and the application for injunction by Shri Bijan Ghosh, as approved by JS(A), have already been sent to Shri Kundu on 17th August, 1993, requesting him to finalise all these Counter-Affidavits on behalf of the Union of India with a view to formally file^{them} in the High Court at Calcutta (page 233/cor.)

~ p. 22/ amr

2. With the F.R., another petition in respect of C.O.No. 6720(W) of 1992 filed by Shri Bijan Ghosh has been received in the name of Dr. Sushanta Kumar Mitra who has also been added as co-Petitioner (the petition is at pages 243-284/cor.).

3. Necessary parawise comments have been attempted and draft thereof is placed below for consideration and approval. In this connection attention is invited to the contentions of the Petitioner in para 13 relating to the statement made by the then Prime Minister, Shri Morarji Desai on the floor of the Parliament as also a reply given on 11th April, 1979, in response to Parliament Question No.6626 on 11th April, 1979, by Shri Dhaniklal Mondal, the then Minister of State in the Ministry of Home Affairs specifically stating in the reply that "in the light of reasonable doubts cast on the correctness of the conclusions reached in the two inquiry reports on the death of Netaji Subhash Chandra Bose, Government find it difficult to accept that the earlier conclusions are decisive. It will, therefore, not be possible to take any action at present on the suggestion of General Fujiwara." attention has been drawn to the effect that the matter was considered by the Government as late as in February, 1991, when it was decided that since already two inquiries on the disappearance of Netaji have been completed and Government having already accepted the conclusions thereof, no useful purpose would be served by holding another inquiry or bringing the ashes back to India at present, as this might create unnecessary tensions (pages 44-54/c. Sub 'y'). As this version is based on a Note prepared by the IS Division for the consideration by the Cabinet Committee on Political Affairs and the acceptance of the proposal by the CCPA, a decision has to be taken in the IS Division whether these papers, if demanded for presentation in the Court can be made available or not.

x slip 'M'

x slips 'X' and 'Y'
(Part F.M. 1/27/91/16
Please refer.)

X
marked 'Secret'

4. There is another para i.e. para 16 in this additional petition which relates to the public interest litigation moved by one Shri Nand Lal Sharma in the Rajasthan High Court being S.B. Civil Writ Petition No.902 of 1984, questioning the reports and findings of the Netaji Inquiry Committee and Khosla Commission. It has been stated by the Petitioner that the Union of India appeared but did not contest the Affidavits though exhaustive opportunity was given by the Hon'ble Court. A reference in this context has been made to a Judgement delivered by Hon'ble Shri Justice Kapoor on 18th January, 1986, directing the Union of India to hold a high level investigative inquiry commission with regard to Netaji within six months from the date of Order taking into ~~account~~ due consideration all the 63 sets of documents and other sets of documents which may be available in other parts of the World relating to the subject and to submit a report thereof.

...contd/-

Since this is something about which information is not available in the two files made available by IS Division, specific comments of that Division will have to be obtained.

Submitted.

PBhatia
(V.P. Bhatia)
Under Secretary/19-8-1993.
23

Director (D.M. & Vig.)

The para-wise comments prepared may kindly be seen. As regards the points on which information are not available with us, the IS Div. may be requested to give their view.

SI(95-I) may ^{Comm} 24/8
also please see. Adopted

SI(95-I)
Dir (D.M. & Vig.)

25.8.93

Pu
26.8.93

Dir (15-1) Please specify ^{on which paras} where IS Divisions
Comments are required for early action

MM
26/8

Dir (D.M.) Ref above: The relevant paragraphs as mentioned on prepage and the para-wise comments thereon may be seen for specific comments. In fact, comments on any points where the IS Div. are concerned, if any, are ~~not~~ ^{are} welcomed.

^{Comm} 26/8

Dir (15-1) Draft comments urgently please
20 DIII

1998/Dir (D.M. & Vig.)
25/8

4526/IS(A)/93
28/8

1120/IS(15-1)/93
26/8

10,033/Dir (15-1)/93
26/8

1863/IS(15-1)/93
30/8


WR
DIII

WR
DIII P. dian

on
Reference notes/prepage:-

Mainly, we are concerned with two points, viz. note portion sidelined 'X' of para 3 on page 23/N. and para 16 of the petition which finds mention in para 4 of note on page 23/N. Our comments on these points are as under:-

- i) Since, the note for the CCPA and the acceptance by the CCPA of the proposal contained in para 11 of the note are Secret documents, it may not be in the interest of security to present the same before the Court of Law.
- ii) Although the civil writ petition No.902 of 1984 in the Rajasthan High Court and the date of judgement delivered, i.e. 18th January, 1986 are correct, the judgement was delivered by Mr. Justice S.N. Bhargava instead of Mr. Justice Kapoor, as mentioned in para 16 of the petition. Further, the Hon'ble Court had in their judgement nowhere ordered for a fresh enquiry, but instead had directed the non petitioner No.2, that is Secretary, M/o External Affairs, Union of India, to look into the matter dispassionately and hear the petitioner in person patiently and examine the documents and evidence that he wants to produce in support of his contention and then come to a definite conclusion. In his opinion 6 months time was sufficient for the Union of India, represented through the Ministry of External Affairs, to examine the whole matter afresh and, if necessary, inviting the public in general to produce material whatever it wants in this connection before coming to a prima facie decision as to whether fresh Commission is necessary or not. The Court also directed the petitioner to submit all his papers, evidence and other material before Government of India and time of six months will start from the date material is filed by the petitioner. A photo copy of the Rajasthan High Court judgement delivered on 18.1.86 in the matter may be seen at F/J.


(R.C. HANDA)
DESK OFFICER
1/9/1993.

Dir (S-1)

*We may give our comments
as per D.D.'s note above.*

2/9/93

JS (S-1)

Discussed with JS(IS.I) when Director(IS.I)
was also present.

Contd..

2. The part file No. 1/27/91-Public is placed below. Apart from the record already available with the file (No.31/2/74-Poll (D.III) regarding Netaji Commission of Inquiry - Follow up action and F.No. 31/2/74-Poll(D.III) regarding Netaji Inquiry Commission Report - Printing of & laying before the Cabinet) one File No. 25/14/70-Poll.II(Desk.III) about the setting up of Khosla Commission of Inquiry in 1970 to probe afresh the disappearance of Netaji Subhash Chandra Bose and another file No. 1/13014/9/77-D.III dealing with No-day-yet-named motion in the House regarding Report (1974) of the Commission of Inquiry into the disappearance of Netaji, are available in this Desk. File No. 25/14/70-Poll.II(Desk.III) is classified and the same can not be presented before the Court as it contains material which is Secret. The other file dealing with the No-day-yet-named motion, although is not marked Secret, the same also contains secret material. These files, if required, can be made available to the Public Section for their perusal but can not be produced before the Court as the same contain decisions of the Cabinet which are 'Secret'. There is no other record available with this Desk on the Khosla Commission of Inquiry. The record relating to the acceptance of findings of the Khosla Commission by the Government is available in the File No.31/2/74-Poll.(D.III) already linked with this file.

3. As regards the Shah Nawaz Khan Committee report and acceptance of its finding by the Government is concerned, no record is available with this Desk. However, it is understood from the record available at Flag 'XX' in linked file No.31/2/74-Poll.(D.III), that the Shah Nawaz Khan Committee was appointed by the Ministry of External Affairs as per their Notification No. F.30/26(FEA)/55 dated 5th April, 1956. Administration Division may see for further necessary action at their end. They may also incorporate a paragraph in the Affidavit for claiming privilege from the Court for not producing sensitive record on the subject.

[Signature]
(R.C. HANDA)
DESK OFFICER
7.9.1993

DIRECTOR (IS.I)

We may return the file to JS(A) with our comments on 25/9 and 28/9

*10622/Dir(15)/57
7/9/93*

*1600/IS(15-1)/93
7/9*

*3-10158/IS(15)
7/9*

JS(15-1)

May kindly see

7.9.93

7/9/93

[Signature]

*SSCIST
JS(15) (on term)
DIRECT*

[Signature]

7/9/93

*JS(15-1)
7/9*

JS(15-1)

7
- 2 -

Reference notes on pages 25-26/ante recorded in the IS-Division in connection with the writ petition C.O. No.6720(W) of 1992 filed by Shri Bijan Ghosh and others against Union of India relating to the conferment of Bharat Ratna posthumously on Netaji Subhash Chandra Bose.

2. Despite clear indications in para 3 of my note on page 23/ante, IS-I Division has not stated anything about the so called statement made by the then Prime Minister, Shri Morarji Desai on 11th April, 1979 and the reply given to Parliament Question by Shri Dhanik Lal Mondal, the then Minister of State in the Ministry of Home Affairs admitting that in the light of reasonable doubts cast on the correctness of the conclusions reached in the two Inquiry Reports on the death of Netaji, Governments finds it difficult to to accept that earlier conclusions are decisive. IS-I Division have also not indicated anything about the files relating to these two matters whether these are available and if so what is the stand to be taken on behalf of the Union of India. The draft parawise comments prepared by me in para 13 are referring to a decision taken by the Government of India in February, 1991, to which IS-Division has stated that since the Note for the CCPA and the acceptance by the CCPA of the proposal contained in para 11 thereof are secret documents, it may not be in interest of security to present the same before the Court of Law. They have not advised whether the reference made to this decision in response to para 13 is in order or not. Similarly they have referred to certain other files in para 2 of their note on page 26/ante that these files are secret (one of them even though not marked secret contains secret material) cannot be produced before the Court even though these can be made available to the Public Section for perusal. The main question under consideration is that for the aspect relating to the disappearance of Netaji Subhash Chandra Bose, the various inquiries held, findings of these inquiries, their acceptance by the Government and other follow up action are aspects which should be vetted by that Division in the various parawise comments prepared by the Public Section and production of records first to the Special Panel Counsel and then in the Court will have to be attended to by IS-Division itself and Public Section cannot act as a proxy for their role. It has further been stated in para 3 on page 26/ante that Shah Nawaz Khan Committee was set up by the Ministry of External Affairs, no record is available in the IS-Desk and the Administration Division may see for necessary action at their end. It has also been stated that Public Section may incorporate a paragraph in the Affidavit for claiming privilege in the Court for not producing sensitive records.

3. Since the proposition is very simple that Public Section has to attend to the aspect relating to the conferment of Bharat Ratna and IS-I Division to the other aspect relating to the death of Netaji Subhash Chandra Bose, it has to be a joint exercise, each Division discharging its own role. It would not be correct to incorporate something in the Affidavit on behalf of IS-I Division till they categorically state that the paras relating to the death of Netaji Subhash Chandra Bose have been correctly reflected therein and they will produce themselves the relevant original records in the Court.

4. Since time at our disposal is very short and things have to be sorted out from all angles including what records can be produced and for which privilege has to be sought, it is suggested that JS(A) may kindly convene a meeting with JS(IS-I) wherein the concerned officers of Public Section and IS-I Division can participate and arrive at a very quick line of approach so that representatives of Public Section and IS-I Division go to Calcutta at the earliest with the original records to show to the Special Panel Counsel to enable him to finalise the Counters in Opposition and subsequently to produce whatever records can be produced in the Court on 22nd September, 1993, and to seek privilege in respect of the records which cannot

be produced. Justification, as desired by the Court for not producing the original records as demanded earlier would also have to be given.

5. Submitted for early consideration of the proposals submitted in the foregoing paragraphs.

VBhatia
(V.P. Bhatia)
Under Secretary/10-9-93.

Director(O&M & Vig.)

10-9-93

J.S(A)

This was discussed with JS(A) this evening in the background of inability expressed by the Senior Central Government Standing Council (Shri S.K.Kundu) and Special Panel Council (Shri R.N.Das) to come to Delhi on account of their commitments in Calcutta High Court. Even though IS Division recorded two notes dated 1st September, 1993 (Page 25 ante) and 7th September, 1993 (page 26 ante), they have not specifically okayed the parawise comments (DFA) in respect of paras relating to the death of Netaji Subhash Chandra Bose and issues related thereto. In the draft parawise comments, in reply to para 13, I have made a mention of a decision taken by the Government in February, 1991 to the effect that "since we have already two inquiries on the disappearance of Netaji and Government having already accepted that Netaji died in the air-crash on 18th August, 1945, at Taihoku, no useful purpose would be served by holding another inquiry or bringing the ashes back to India at present, as this might create unnecessary tensions". ~~Even though~~ IS-I Division have stated (page 25 ante) that the note for the CCPA etc. are Secret documents, ^{and} it may not be in the interest of Security to present the same before the Court of Law. While that Division may seek privilege in respect of production of Secret record, they have not communicated whether the position stated in para 13 of the draft parawise comments would be in order since the decision of 1991, referred there-in (which is Secret) has been relied upon. Further, with reference to para 16 of the Writ Petition, IS Division has narrated the position of the Court Case in the Rajasthan High Court. The precise reply to para 16 to be included in the Counter Affidavit has not been specifically given against para 16 of the draft parawise comments.

2. JS(A) may like to discuss the matter with JS(IS-1) with a view to vet the parawise comments (DFA) so that these may be finalised and taken to Calcutta by the Officer being deputed to have face to face discussions with Shri R.N. Das, Special Panel Council, alongwith original records relating to conferment of Bharat Ratna and the death of Netaji Subhash Chandra Bose.

Submitted.

VBhatia
(V.P. BHATIA)
UNDER SECRETARY/ 14.9.93

JS(A)

*I spoke to you yesterday.
Matter is very, very urgent.
We may discuss TODAY at
your convenience.*

15-9-93

*As spoken, please
discuss with all
records available
with (IS-I) Dr. Immediat.
15/9
JS/JS-T
Dir(IST)*

*4986/JS(A)/93
15.9.93*

*1972/JS(15-1)/93
15/9*

*11104/Dir(15)/93
15/9/93*

Reference notes on page 27-28/N.

2. In this connection as desired by Director(IS.I)/JS(IS.I) record relating to Netaji Inquiry Commission 1970 has been searched and retrieved from the Secret Record Room. A list of such record retrieved from the Secret Record Room is at flag 'Y'. None of these files have any relevance with the subject matter of the notes on page 27-28/N of Administration Division.

3. The Administration Division in their Note in para 2 on page 27/N have mentioned that I.S. Division has not stated anything about the so called statement made by the then Prime Minister, Shri Morarji Desai on 11th April, 1987 and reply given to Parliament Question by Shri Dhaniklal Mandal the then Minister of State in the Ministry of Home Affairs admitting that in the light of reasonable doubts cast on the correctness of the conclusions reached in the two inquiry reports of the death of Netaji, Government finds it difficult to accept that earlier conclusions are decisive. First of all it may be pointed out that the date on which the then Prime Minister Shri Morarji Desai made a statement i.e. 11th April, 1979 mentioned in the Note and the date mentioned in para 13 of the parawise comments offered i.e. statement made by the then Prime Minister on 28th August, 1978 do not tally. The same may be reconciled as it might cause embarrassment to the Government. As regards the files on the statement by the then Prime Minister and Question answered by the then Minister of State, Shri Dhaniklal Mandal are concerned it is stated that no files are available on these matters with this Desk.

4. With regards to comments offered in para 13 of the draft parawise comments which are based on a decision taken by the Cabinet Committee on Political Affairs in February, 1991 on a Note for the CCPA prepared by I.S. Division, it may be mentioned that decision of the Cabinet is "SECRET". The matter as such is sensitive. We have proposed for claiming privilege from Court for not producing the record on the subject under Section 123 and 124 of the Evidence Act 1872. An extract of the relevant portion of the Evidence Act 1872 may be seen at Flag 'BB'. This has been done with the approval of SS(ISP). Other files quoted in para 2 of this Desk's note on page 26/N also contain Secret material. These documents are, therefore, also sensitive as these contain decisions of the Cabinet/CCPA. Privilege for not producing these documents before the Court may also be claimed under Sections 123 & 124 of the Evidence Act. If it is still felt and apprehended that the Court may disallow the claim of privilege and issue directions to produce the record in the Court, we may seek the approval of HS/Cabinet Secretariat to produce the following sensitive record in the Court in consultation with the Ministry of Law

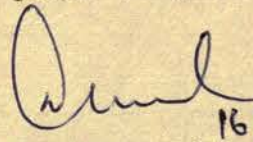
- | | | |
|----|--|--|
| 1. | File No.31/2/74-Poll(D.III) | Netaji Commission of Inquiry-Follow up action. |
| 2. | Part
_ /File No. 31/2/74-Poll(D.III) | Netaji Inquiry Commission Report- Printing of & Laying before the Cabinet. |
| 3. | Part
Pt. File No.31/2/74-Poll (D.III) | Examination of Netaji Inquiry Commission Report. |

4. File No. 25/14/70-Poll.II(D.III) The Setting up of Khosla Commission of Inquiry in 1970 to probe afresh the disappearance of Netaji Subhash Chandra Bose .
5. File No.I/13014/9/77-D.III No-day-yet-named motion in the House regarding Report (1974) of the Commission of Inquiry into the disappearance of Netaji.

It is further confirmed that para-wise comments are in order.

5. As regards the Report of Shah Nawaz Inquiry Committee and its acceptance by the Government, Khosla Commission of Inquiry and its acceptance of its findings by the Government, we have already offered our comments on page 26/N and whatever record about the Khosla Commission of Inquiry and acceptance of its findings by the Government was available in this Desk has already been made available to the Public Section.

6. As regards reply to para 16 of the affidavit relating to the Judgement given by the Rajasthan High Court on 18th January, 1986 is concerned it has been clearly mentioned in para (ii) of note on page 25/N dated 1st September, 1993 that nowhere the Court had directed for a fresh Inquiry into the disappearance of Netaji Subhash Chandra Bose. Hence, the contents of para 16 are refuted.


 16/9
 (R.C. HANDA)
 DESK OFFICER)

Dir (IS-1)

The note of Desk Officer dated 16-9-93 may please be seen above. The first three files listed in para No.4 are actually one file which has been split into three parts. This file contains secret Cabinet Note and the decisions of the Cabinet regarding the acceptance of the findings of the Khosla Commission. The file listed at Serial No. 4 has secret papers including Cabinet Note about the appointment of the Khosla Commission of Inquiry. The file listed at S.No. 5 also contains secret papers including Cabinet Notes and decision of the Cabinet not to hold any further inquiry about the disappearance of Netaji. In addition two files are available 1. File No. 29/48/69-Poll-II and 2. File No. 24/27/71-Poll.II. The file listed at Serial No. 1 ^{above} has secret Cabinet Note and other secret papers. The file listed at Serial No. 2 ^{above}

may be made available to the Court even though the

Concerned files kept below

also contains certain secret correspondence.

2. The matter was discussed with JS(IS-I). It was found that it would not be in public interest to divulge information contained in these files. Therefore, we may claim privilege under Section 123/¹²⁴ of the Indian Evidence Act. However, we may show these files to our Counsel at Calcutta. We may obtain the orders of Home Secretary in this regard. Thereafter if it is decided to claim privilege the draft may be got vetted from Law Ministry.

(C.I. JOY)
Director (IS-I)
16-9-93

JS(IS-I)

JS
16-9-93

SSCIS We should seek total privilege

Wain.
16/9

Reference JS(A)'s remarks on the draft parawise comments (DFA) in respect of para 16 of the writ petition (F.R.) and portion sidelined 'A' of my note on page 28/ante. Since parawise comments have to be settled very early for formally filing in the High Court at Calcutta on 29th September, 1993, it is requested that precise version of reply to be given in response to para 16 of the writ petition may kindly be made available to Public Section at the earliest.

2 by J.S. Div.

V.P. Bhatia

(V.P. Bhatia)
Under Secretary/27-9-1993.

DS(O&M)

This file was personally delivered by Mr. Bhatia (US Vigilance) to Dir(IS-I). In so far as specific comments of IS Dir. on para 16 are concerned, we have already offered our comments on this para vide our notes on pg. 25/12 and in para 6 of pre page. There is nothing that IS Dir. can add more. If any other information in this regard is required,

from the page.

12
- ~~2~~ -

the Ministry of External Affairs,
who were the non petitioners
no. 2 and whom the Rajasthan
High Court had directed to
hear the petitioners in their
judgement, may be addressed
in the matter.

Amul
27/9

Dil (19/1)

Only the MEA can throw
light on para 16. We can only
add that conclusion arrived
at 'A' on para 16 by petitioners
does not appear logical (which
is clear to anyone). The Central Govt.
Council can argue appropriately.

27/9/93

Dir (G & M)

Reference above: mms
Kindly see with reference to his
remarks in the D.F.A.

J.S.(A)

He discussed ^{Committee} 27/9.

Issue said do.

to JS (Coordn), MEA.

MS (Public)

~~Respectfully~~

27-9-93

S. No. 1 (Issue)

From pre-page

JS(A) made a reference to Joint Secy (Cons)
Miny of External Affairs (Slip 'A') to know the follow up action
taken by that Miny on the judgement delivered by Rajasthan
High Court so that we frame our parawise comments ^{based thereon} in the
a petition filed by Dr. Sushant Kumar Mitra in Calcutta High
Court. No reply has so far been received.
2. We may remind him in the DFA

2544/1318(60th)/93
5/10

Director (exam 200)

APShah
5.10.93

5/10

JS(A)

with all
I have ^{ev}
completely revised.

I have also spoken today
to Shri Dilip Lahiri,
JS(A), DEA.

5.10.93

JS(Pub)

S.No 2 (Issue)

S.No 3 (Receipt)

✓
Parawise comments in respect of petition filed by Dr.
Sushant Kumar Mitra, an added respondent in C.O. No.6720(W) of
1993 filed by Shri Bijan Ghosh against Union of India were
prepared and submitted to JS(A) for his kind perusal and
approval. While going through these parawise comments, JS(A)
recorded that on para 16, we must insist on IS Division's
comments. Accordingly, IS Division was requested vide my note
dated 27th September, 1993 (page 31/ante) ~~requesting them~~ to make
available the precise version of reply to be given in response to
para 16 of the writ petition. In response, that Division indicated
that only Ministry of External Affairs can throw light on the
contents of para 16. Accordingly, the matter was taken up with
the Ministry of External Affairs (Slips 'A' and 'B'). The Ministry
of External Affairs have now sent a formal reply. The operative
portion relating to the judgement dated 4th March, 1987 (Slip 'J')

x Note on pre-page

x PR

...contd/-

delivered by Hon'ble Shri Justice S.N. Bhargava of the High Court of Judicature, Rajasthan is as under:-

"Subsequent to the judgement having been passed, it was brought to the notice of this Ministry that the petitioner (Shri Nand Lal Sharma) had died. Coordination Division of this Ministry had, therefore, informed Shri Talekar, Counsel of the late petitioner that as the petitioner had passed away before the meeting with the MEA/Government of India representative could take place, no further action was called for on the part of the Government of India. Our Legal and Treaties Division had also opined inter alia that since no evidence or documents of any kind were ever produced by Shri Nand Lal Sharma, the occasion to consider whether or not a fresh enquiry was required did not arise."

2. Based on this position, a draft reply to para 16 of the Petition has been attempted which may kindly be seen for approval.

3. After the draft parawise comments, including the reply to para 16, proposed now has been formally approved by JS(A), the same would be fair typed, got affirmed from a Notary Public and necessary number of copies will be sent to Shri Kundu, Central Govt. Advocate (or taken personally when some representative of this Ministry goes to Calcutta for the next hearing fixed for 6th December, 1993).

Submitted.

(V.P. Bhatia)
Under secretary/12-10-93.

Director (D.M. & Vig.)

J.S. (A)

13/10 Dir (D.M. & Vig.)
no (Pub)

S.No. 4 (1 Issue)

We may remind Shri S.K. Kundu to return the Affidavit-in-Opposition duly settled with reference to the petition filed by Dr. Sushant Kumar Mitra, an Added Respondent, urgently so that the same can be filed in the Calcutta High Court after doing the required formalities. A fair d.o. reminder as dictated, may issue.

(V.P. Bhatia)
Under Secretary/15-11-1993.

S.O. (Public)

S.No. 5 (1 Issue)

✓ Added at appropriate place

646 (Dir O.M.) 91
13/10/93

5592/JS(A)/93
13/10/93

14/10/93
So. Pub
8/11/93
14/11/93

S.NO. 6-7 (Receipts)

FR-I&II-35-

Central Government Advocate, Branch Secretariat, Calcutta has forwarded a copy of the affidavit-in-opposition filed by Shri Bijan Ghosh, the Petitioner, against the affidavit filed on behalf of Respondent No.1 claiming privilege under Sections 123 & 124 of the Evidence Act read with Article 74(2) of the Constitution of India and has asked for supply of comments at an early date to enable him to prepare the affidavit-in-reply at an early date and to have it affirmed before the case appears for hearing on 6th December, 1993.

2. Parawise comments have been attempted and are placed below (DFA). After the same has been approved by JS(A), this will be sent to the Central Government Advocate for preparing an affidavit-in-reply, getting it settled from Shri R.N. Das, Senior Panel Counsel and returning the same to us for doing the needful before formally filing in the High Court at Calcutta.

3. Parawise comments in v/o the affidavit filed by the added respondent, Shri Sushant Kumar have also been seen by Senior Panel Counsel, Sh. R.N. Das and an Affidavit-in-opposition duly settled by him sent (F.A.D.). The same appears to be in order. JS(A) may also see the same before it is clean typed on a green-sheet.

(V.P. Bhatia)

Under Secretary/23.11.93

DIRECTOR(O&M & VIG.)

J.S(A)

Para-wise comments may be sent immediately to Shri R.N. Das. Please fax me comments. Today itself. Shri Ghosh's AEO and our comments may also be shown to Addl. S.G. who will be appearing on behalf of the Government on 6.12.1993.

Advocate General
25.11.93

no 26/11

Dir (O&M/Vig)

US (Pub)

MOST IMMEDIATEMINISTRY OF HOME AFFAIRS

Subject:-C.O.No.6720(W) of 1993 - Bijan Ghosh and others versus Union of India and others - relating to declaration of award of Bharat Ratna, posthumously on Netaji Subhas Chandra Bose.

The Senior Central Government Advocate, Ministry of Law & Justice, Branch Secretariat, Calcutta, has sent a copy each of the following:

- (i) amended writ petition by Shri Bijan Ghosh - Petitioner.
- (ii) Supplementary affidavit of added Respondent, Dr. Susanta Kumar Mitra.
- (iii) Application filed by Shri Samar Ghua, ex-M.P., an added Respondent.

2. A copy each of the above three affidavits/application are sent herewith to IS-Division with the request that their comments in respect of the paras with which they are concerned, may be made available to this Division for incorporation in the parawise comments being prepared in response to these affidavits/application. In this connection it may be pointed out that with reference to the supplementary affidavit of added Respondent, Dr. Susanta Kumar Mitra, specific comments of IS-Division are required in reply to paragraphs 11,12,13,16,17, 21 to 26, 28 and any other para which in the opinion of that Division should appropriately be handled by them. Bharat Ratna, posthumously on Netaji Subhas Chandra

3. As regards the amended Writ Petition by Shri Bijan Ghosh and the application filed by Shri Samar Guha, Ex-M.P., we are in the process of attempting parawise comments and it is not possible immediately to point out the specific paras which require comments of IS-Division. It is, therefore, requested that they may kindly go through the contents of these two (Petition/application) and offer their considered comments in respect of the paras with which they are concerned.

(ii) Supplementary affidavit of added Respondent, Dr. Susanta Kumar Mitra.

4. This may be treated as Most Urgent as the next date of hearing is 6th December, 1993 and JS(A) is leaving for Calcutta on the morning of 5th December, 1993.

(iii) Application filed by Shri Samar Ghua, ex-M.P., an added Respondent.

2. A copy each of the above three affidavits/application are sent herewith to IS-Division with the request that their comments in respect of the paras with which they are concerned, may be made available to this Division for incorporation in the parawise comments being prepared in response to these affidavits/application. In this connection it may be pointed out that with reference to the supplementary affidavit of added Respondent, Dr. Susanta Kumar Mitra, specific comments of IS-Division are required in reply to paragraphs 11,12,13,16,17, 21 to 26, 28 and any other para which in the opinion of that Division should appropriately be handled by them. Bharat Ratna, posthumously on Netaji Subhas Chandra

JS(A)
3/12
JS(15I)
Immediate

3. As regards the amended Writ Petition by Shri Bijan Ghosh and the application filed by Shri Samar Guha, Ex-M.P., we are in the process of attempting parawise comments and it is not possible immediately to point out the specific paras which require comments of IS-Division. It is, therefore, requested that they may kindly go through the contents of these two (Petition/application) and offer their considered comments in respect of the paras with which they are concerned.

JS(15I)
3/12

(ii) Supplementary affidavit of added Respondent, Dr. Susanta Kumar Mitra.

4. This may be treated as Most Urgent as the next date of hearing is 6th December, 1993 and JS(A) is leaving for Calcutta on the morning of 5th December, 1993.

Do D. III

The note of Under Secretary, Dated 3.12.93, may please be seen overleaf. As regarding the amended writ petition, supplementary affidavit and application filed by Sri Samar Guha, the comments are as follows. The Shah Nawaz Khan Committee appointed in 1950 came to the conclusion that Netaji died in an air crash at Taihoku on 18th August, 1945. Sri. Suresh Chandra Bose ~~are~~ deferred with the findings and gave a dissenting report. The Majority report was accepted by the Government. However the Government appointed a one man commission of enquiry in July 1970 under Sri. G.D. Khosla. This was done because some people still held that Netaji was not dead. The Commission after comprehensive enquiry came to the conclusion that Netaji died in an air crash at Taihoku on 18th August, 1945, arriving at the same conclusion as Shah Nawaz Khan Committee.

Cabinet considered report of the commission on 29th August 1974 and accepted the finding of the commission. The report of the Commission and memorandum of action taken was laid on the table both the houses of parliament on 3rd September, 1974. A CCFA note was prepared and forwarded to the cabinet on 10th January, 1991. In para 11 of this note it was stated that since the Government has accepted that Netaji died in the air crash, no useful purpose would be served by holding another enquiry or by bringing the ashes back to India as it might generate tensions. On 27th February 1991 the CCFA considered this note and approved the proposal contained in para eleven of the note.

No material is available with the IS Division regarding the 3rd enquiry Commission, said to be ordered by the then Prime Minister Sri. Chandra Sekhar regarding the death of Netaji. Similarly no papers are available about the statement made by Sri. Morarji Desai, the then Prime Minister and the statement of Sri. Daniklal Mandal in reply to a question in Parliament.

The decisions of CCFA/Cabinet are secret and we have informed administration division with the approval of SS(SF) to claim privilege from the court for not producing records on the subject in the court. We have given our detailed comments and shown all available material with us to the administration division. Beyond this, we are not in a position to offer comments in the absence of any material available with us at short notice.

(C.I. 111)
DIRECTOR (IS-1)
4.12.93.

JS (IS-1)

JS (A)

*Received at home by
me on the night of
4th Dec 1993*

*Udayakumar
8.12.93*

U.S. (Pulse)

✓ slip / M/
p. 35/ankle

Affidavit-in-reply to the affidavit-in-opposition filed by the Writ Petitioner to the affidavit of Home Secretary claiming privilege under Sections 123 and 124 of the Evidence Act read with Article 74(2) of the Constitution of India duly settled by Shri R.N. Das, has been received. As directed by JS(A), vide his note dated 26.11.1993, this settled affidavit-in-reply has also been shown to the Additional Solicitor General of India who has gone into the same and has found the same in order. It is being fair copied on the green sheet and will be sent to Shri Kundu after getting it duly sworn here along with required extra copies with the request to file the same in the High Court at Calcutta.

✓ FRI
* FR II
⑧ FR III

2. In the meantime, we have received from our Central Government Counsel, Shri S.K. Kundu, a copy of the supplementary affidavit filed by Dr. Susanta Kumar Mitra, added respondent No.5; a copy of the amended writ petition filed by Shri Bijan Ghosh, the main Petitioner and a copy of an affidavit filed by Shri Samar Guha, ex-M.P., who has been admitted as an added Petitioner by the Hon'ble High Court of Calcutta.

3. Parawise comments in respect of the above three affidavits have been attempted and are placed below (DFA I, II & III).

* p. 36/ankle
p. 37/ankle

4. Earlier on the direction of JS(A), a copy each of the above three affidavits were sent to IS Division with the request to offer their comments in respect of the paras with which they are concerned so that the same could be incorporated in the parawise comments being prepared by us and sent to Calcutta for settlement by the Senior Panel Counsel, Shri R.N. Das. It was indicated in our note as regards the supplementary affidavit of added respondent Dr. Susanta Kumar Mitra that specific comments may be given in reply to paragraphs 11, 12, 13, 16, 17, 21 to 26, 28 and any other para which in the opinion of IS Division should appropriately be handled by them. In response, instead of giving their parawise comments only a running note was sent by Director(IS-I) to JS(A) explaining the position briefly that the Shah Nawaz Khan Committee came to the conclusion that Netaji died in an air crash at Taihoku on 18th August, 1945, even though Shri Suresh Chandra Bose, one of the three members differed with the findings and gave a dissenting report, the majority report was accepted by the Government. He further stated that Government appointed a one man Commission of Inquiry in July, 1970, under Shri G.D. Khosla, because some people still held that Netaji was not dead. The Commission also came to the same conclusion as was arrived at by Shah Nawaz Khan Committee. He also referred to the consideration of the report of the Khosla Commission by the Cabinet and acceptance by it of its findings; the laying of the report of the Commission and the Memorandum of Action Taken on the Table of both Houses of Parliament on 3rd September, 1974; a CCPA note prepared in January, 1991, and the conclusion contained in para 11 thereof having been accepted by the CCPA to the effect that since the Government has accepted that Netaji died in an air crash, no useful purpose would be served by holding another inquiry or by bringing the ashes back to India as it might generate tensions.

5. Besides the above information, according to Director (IS-I), IS Division is not having any material regarding the third Inquiry Commission said to be ordered by the then Prime Minister, Shri

...contd/-

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- 39 -

Chandrasekhar. He further stated that no papers are available about the statement made by Shri Desai, the then Prime Minister and the statement by Shri Dhaniklal Mandal in reply to a question in Parliament.

6. From a perusal of the parawise comments now prepared, I have marked by underlining the specific paras and by sidelining the comments where specific comments of IS Division are required to enable us to finalise the parawise comments. It is observed therefrom that in the portions sidelined, the Ministry of External Affairs, Prime Minister's Office and at one place Ministry of Defence are also involved. But instead of taking up the matter with all these Ministries, it would be appropriate that this information is obtained from these sources by IS Division itself. It would be pertinent to point out that the narrative version as furnished by Director(IS-I) and referred to above would not serve any purpose. In view of this position, we may send again a copy each of the three affidavits and copy each of the three parawise comments to IS Division requesting them to favour us with their specific reply in response to the individual paras marked to be handled by IS Division. Accordingly, a note to be sent to JS(IS-I) has been attempted and is placed below along with necessary enclosures for kind consideration and orders of JS(A).

in a separate
folder.

Submitted.

V.P. Bhatia
(V.P. Bhatia)
Under Secretary/ 16-12-93.

Director(O&M & Vig.)

16-12-93

JS(A)

I have made some slight changes in the Affidavit in reply to the Affidavit-in-Opposition by the Writ Petitioner to the Privilege Affidavit.

2. The expression 'Writ Petition' has been repeatedly used in the draft received from Shri Das. This is obviously a mistake. The expression 'said affidavit' may be substituted for the expression 'writ petition' wherever the latter occurs. DFA-I and DFA-II are approved as revised by me. It is not necessary to make any consultation with the IS Division. Fair copies of both these drafts may be sent to Shri Kundu immediately.

3. As regards DFA-III, a revised draft is placed below which may be sent to Shri Kundu. It is not necessary to answer Prof. Samar Guha's affidavit in detail. A detailed answer will only bog us down into further controversy over details. Government's stand in the matter is quite clear, and we should stick to it.

4. If Shri Aiyappa Nath Bose has filed any supplementary affidavit, it may also please be obtained and submitted quickly with comments.

M. Venkateswara Iyer
(M. Venkateswara Iyer)
Joint Secretary (A)
December 23, 1993.

Director(O&M)

The case relating to the posthumous award of Bharat Ratna to Netaji Subhash Chandra Bose came up again for hearing in the Calcutta High Court before Justice Shyamal Kumar Sen on 6.12.1993. Additional Solicitor-General, Shri Altaf Ahmed, appeared for the Ministry of Home Affairs.

2. Additional Solicitor-General informed the Court that although the President had announced the award of Bharat Ratna posthumously to Netaji, the award was not notified. The stage of notification did not arrive because the very announcement of the award provoked an adverse reaction in many quarters. Considering this reaction, and with a view to avoiding any unnecessary controversy, Government decided not to proceed any further in the matter and to treat the matter as closed. Additional Solicitor-General, therefore, suggested that the petition must be dismissed because the petitioner had really no cause of action.

3. In spite of the clear stand taken by the Additional Solicitor-General, the learned Judge directed the Additional Solicitor-General to produce the decision taken as to how the matter was closed. He also ordered that the necessary files be produced by the Government before the Court on the next date of hearing (19.1.1994) subject to the claim of privilege already made by the Home Secretary. The learned Judge further ordered that relevant records be placed before the Court which would show as to what led the Government to review its own decision and to take a fresh decision.

4. It is obvious that the Calcutta High Court is bent on prolonging this litigation in spite of the fact that the petitioner has no case at all. It has been made abundantly clear to the High Court that although an announcement was made regarding conferment of Bharat Ratna posthumously to Netaji, Government decided later on not to proceed any further, and to treat the matter as closed. This fact has been stated in almost all the affidavits already filed before the Court on behalf of the Government. It has also been stated in the affidavits that the decision to treat the matter as closed was taken precisely in order to avoid any controversy. In short, Government have no intention at all of proceeding any further in the matter by way of presenting the decoration to the next-of-kin of Netaji or depositing it with an institution etc. As far as the Government are concerned, the matter is absolutely closed. In the circumstances, it is thoroughly unnecessary for the Court to pry into the matter any further and find out what prompted the Government to close the matter etc. etc. This will be a futile academic exercise with which the Court is not concerned at all. There is now no issue before the Court for adjudication. Since there is no issue before the Court, the question of production of records will also not arise.

5. The High Court has erred in issuing the order dated 6.12.1993. The order has to be contested before the Supreme Court. A Special Leave Petition will have to be filed. This matter was discussed at a meeting taken by the Additional Solicitor-General yesterday at his residence. Shri R.N. Das, Senior Counsel at Calcutta, who has also been engaged in this case, was also present at the meeting. It was agreed that an SLP might be filed immediately in the Supreme Court against the order dated 6.12.1993 of Justice Shyamal Kumar Sen.

6. The documents called for by the Court are protected by Article 74(2) of the Constitution. The Court cannot look into them. The Court is prohibited from looking into them. Although the claim of privilege is pending before the Court, the Court has not yet passed any order on the same. In any case, as already stated above, in view of the stand taken by the Government, there is no issue before the Court which has to be adjudicated upon. It is, therefore, not necessary for the Court even to consider the claim of privilege. The Court should dismiss the petition outright.

7. The disclosure of records in this case will only stir up further controversies. As the President, the Prime Minister, the

(from prepage)

Home Minister, the Home Secretary and other Senior Officers are involved in the decision taking process, it would cause avoidable embarrassment to produce the records before the Court.

8. The Ministry of Law (Department of Legal Affairs) may kindly see and refer the matter to the Central Agency Section for filing an SLP in the Supreme Court as stated in paragraph 5 above.

M. Venkateswara Iyer
(M. Venkateswara Iyer)
Joint Secretary (A)

Hein R.K. Gupta
Dr. S.G. Jain, JS&LA, Department of Legal Affairs
MHA ID No. / / -Public dated 3.1.1994.

विधि, न्याय एवं कानूनी सेवा विभाग
Min. of Law, Justice &
Company Affairs
(विधि व न्याय विभाग)
(Deptt. of Legal Affairs)
डा. स./Dy. No. 35/94-A
दिनांक/Dated... 3/1/94

22
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Department of Legal Affairs

The question for our consideration is whether an SLP should be filed in the Supreme Court against the order dated 6th December, 1993 passed by Single Judge of Calcutta High Court in C.O.No.6720(w)/93 filed by Mr. Bijan Ghosh. The copy of the order is placed at F/X.

2. Ministry of Home Affairs has brought out the facts and issues involved in this case vide their note at pages 40-41/n. which may kindly be seen. However, briefly stated, the present case relates to the posthumous award of Bharat Ratna to Netaji Subhash Chandra Bose came up for hearing in Calcutta High Court before Hon'ble Mr. Justice Shyamal Kumar Sen on 6.12.93. Shri Altaf Ahmed, Additional Solicitor General of India appeared for the Union of India. He appears to have submitted before the Court that although the President had announced the award of Bharat Ratna posthumously to Netaji, the award was not notified. The stage of notification did not arrive because the very announcement of the award provoked an adverse reaction in many quarters. He further submitted that considering the reaction, and with a view to avoiding any unnecessary controversy, Government of India decided not to proceed any further in the matter and to treat the matter as closed. He, therefore, suggested that the petition must be dismissed because the petitioner had no cause of action. However, the Court directed the Additional Solicitor General to produce the decision taken as to how the same has been closed. The Court also directed that the necessary files be produced by the Union of India before the Court on the next date of hearing i.e. 19.1.94 subject to the claim of privilege already made by the respondents. Union of India will also disclose by placing relevant records as to what led the Government to review its own decision and to take fresh decision if there be any.

3. Secretary, MHA, has already filed an affidavit claiming privilege in respect of the documents required to be produced u/s.123 and 124 of the Evidence Act, read with article 74(2) of the Constitution. It appears that the documents required to be produced by the Court falls in the category given under article 74(2) of the Constitution, and therefore, the Court would not be competent to enquire into these papers. Having regard to the above, we feel that the present is a fit case for filing an SLP before the Supreme Court. Additional Solicitor General of India, it appears is also of the view to challenge the order before the Supreme Court.

4. In view of the above, Central Agency Section is requested to obtain the opinion of one of our Law Officers as regards the feasibility of filing an SLP before the Supreme Court under article 136 of the Constitution in this case.

JS & LA may kindly see.

Sd. Sharmu
(S.K. Sharma)
Deputy Legal Adviser
3.1.1994

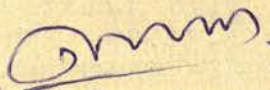
JS&LA (Shri R.K. Gupta)

Normally Supreme Court does not interfere with interim orders in SLP. Moreover, an appeal also lies with the S.C. against the impugned order. However, since an important issue is involved in this case, we may take a chance. Opinion of L.D. Council may also be obtained.
C.A.S. *any*

from pre-page

Central Agency Section

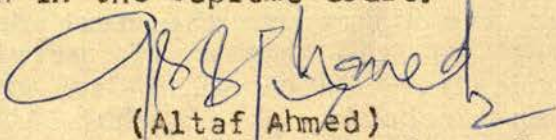
The Learned Addl. Solicitor General may kindly see and confirm whether an S.L.P. to be filed in the Hon'ble Supreme Court under the Art. 36 of the Constitution of India.


(P. Parameswaran)
Addl. ~~Govt.~~ Advocate
4.1.94

Shri Altaf Ahmed
Addl. Solicitor General

OFFICE OF THE ADDL. SOLICITOR GENERAL

In my opinion this is a fit case for filing a special leave petition in the Supreme Court.


(Altaf Ahmed)
Addl. Solicitor General
4.1.94

CAS

11/80/93
4/1/94

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Reference notes from page 40 onwards.

2. A Special Leave Petition was drafted in C.O. No. 6720(W) of 1993 filed by Shri Bijan Ghosh in the High Court at Calcutta, challenging the conferment of Bharat Ratna posthumously on Netaji Subhas Chandra Bose with particular reference to the order dated 6th December, 1993 passed by Shri Justice Shymal Kumar Sen of Calcutta High Court. The said SLP was filed in the Registry of the Supreme Court on 4th January, 1994 and it was mentioned before the Supreme Court on 14th January, 1994, when the Court was pleased to pass the following order:

Upon motion the matter is taken on board. Issue notice.

Interim stay of the impugned order. List this matter on Monday alongwith T.P.(C) Nos. 811-12 of 1993".

3. This matter was listed today in the Supreme Court (in Court No. 1 of the Chief Justice of India as item No. 35). On a specific query by the Chief Justice of India, Learned Additional Solicitor General (Shri Altaf Ahmad and learned Solicitor General, Shri Dipankar Gupta) informed the three Member Bench headed by Chief Justice of India that the Government of India is filing a Transfer Petition in the said case. Consequently the three Member Bench was pleased to direct the stay of all proceedings in the Calcutta High Court on the assurance that Transfer Petition would be filed immediately. A formal copy of the order has been applied for and would be available by to-morrow sometime.

4. We may request Ministry of Law & justice (Department of Legal Affairs) to refer this matter to the Central Agency Section (Shri P. Parmeswaran, Addl. Government Advocate) for preparation of the draft Transfer Petition on a priority basis.

5. JS(A) may kindly see before the file is sent to Ministry of Law & Justice (Department of Legal Affairs).

विधि, न्याय एवं कम्पनी कार्य विभाग
Min. of Law, Justice &
Company Affairs
(विधि एवं न्याय विभाग)
(Deptt. of Legal Affairs),
हा. स./Dy. No. 273/94-A
दिनांक/Dated..... 18/1/94

DIRECTOR (O&M & VIG.)

(V.P. Bhatia)
Under Secretary/17-1-94.

JS(A)

percepted
17.1.1994

Dr L.C. Taini
Legal Advisor

विधि, न्याय एवं कम्पनी कार्य विभाग
Min. of Law, Justice &
Company Affairs
(विधि एवं न्याय विभाग)
(Deptt. of Legal Affairs)
आवक/क्र. 'क' अनुभाग
एच. स. 'A' सेक्शन

Central Agency section may please see the above note for further appropriate action.

Central Agency section
(Shri P. Parmeswaran) CAS
Dy. Govt. Advocate

18/1/94
18/1/94

S
18/1/93
Adv. A'

Central Agency Section

The Learned Addl. Solicitor General may kindly see the note opine as to the feasibility of filing Transfer Petition in the Hon'ble Supreme Court.

(P. Parameswaran)
Addl. Govt. Advocate
19.01.94

Office of the

Addl. Solicitor General (Shri Altaf Ahmed)

Transfer Petition under Art-139A
may be filed.

[Signature]
19.1.94

(Altaf Ahmed)
Addl. Solicitor General for India

Plse take slip of Transfer Petition and submit
to Shri B. Parthasarathy, Adv.

Reference notes from pre-page.

2. A draft of the Transfer Petition (Slip 'A'), prepared by Shri B. Parthasarathy, Advocate, was collected personally on 25th January, 1994, in the evening. This has been gone through and, as per discussion with JS(A), it has been recast and a clean typed copy of the modified version is placed below at Slip 'B'.

3. After JS(A) has seen the modified version of the Transfer Petition, the same will be sent to Shri P. Parmeswaran, Additional Government Advocate for getting the same settled by Hon'ble Additional Solicitor General for India (Shri Altaf Ahmed).

DIRECTOR (O&M & VIG.)

(V.P. Bhatia)
Under Secretary/2.2.94.

J.S.(A)

Shri Parameswaran
Addl. Govt. Advocate

[Signature]
2.2.94

Plse take slip of
3/2/94

1/11/94
19/1/94

Dy No 219/94 CAS
19.1.94

Thiruvananthapuram
US (Pub)
3/2

646/JS(A)/94
3/2/94

Ministry of Home Affairs

Subject:- CO No. 6720(W) - filed by Shri Bijan Ghosh and others versus Union of India in the Calcutta High Court challenging the posthumous conferment of Bharat Ratna on Netaji Subhas Chandra Bose.

In the matter referred to above, an SLP was filed in the Supreme Court requesting for stay of further proceedings in the Calcutta High Court as also for transfer of the same to the Supreme Court. The said SLP was heard in the Supreme Court by a two Member Bench presided over by Hon'ble Chief Justice of India on 17th January, 1994 when all further proceedings in the Calcutta High Court in the said case were stayed. Subsequently, a formal Transfer Petition was also filed in the Supreme Court on 21st February, 1994.

2. The said Transfer Petition (No. 103 of 1994) was listed for preliminary hearing today before a two Member Bench consisting of Hon'ble Mr. Justice M.M. Punchhi and Hon'ble Mr. Justice S.P. Bharucha. Director (O&M/Vig.) and myself were present in the Court.

3. After hearing Additional Solicitor-General (Shri Altaf Ahmad), the Hon'ble Mr. Justice Punchhi observed that since SLP has already been admitted and further proceedings have already been stayed, the SLP along with the Transfer Petition filed on 21st February, 1994, may be heard together on the next date fixed for hearing. No specific date has, however, been indicated by the Hon'ble Bench for the next hearing.

Submitted.

(V.P. Bhatia)
Under Secretary(Pub. & Vig.)
28.3.94

Dir. (O&M/Vig.)

28-3-94

for kind information,
Resubmitted
28.3.94

Released -
3973

PSW/HM 1.4.94.

1112(Dir O&M)94
5/4/94
1547/3300/H4
29/3/94
F-1705/148994
29/3/94
1358/6694-HM8
29/3/94

SS(A)

J.S.(A)

4/4/94
H.M. has perused.
JS(A)

29/3

4/4
ns (H.M.)

Reference note on pre-page.

2. The Transfer Petition No.103 of 1994 together with SLP No.628 of 1994 came up for hearing today in the Supreme Court of India before a two Member Bench consisting of Hon'ble Chief Justice of India and Hon'ble Mr. Justice S. Mohan.

3. After hearing both the parties, the Hon'ble two Member Bench presided over by the Chief Justice of India ordered that the case pending in the Calcutta High Court be withdrawn to the Supreme Court and the Registry of the Supreme Court will take further necessary follow up action.

4. With the consent of both the parties, the Hon'ble two Member Bench also fixed 26th July, 1994, as the next date of hearing.

Submitted for information.

(V.P. Bhatia)
Under Secretary/2.5.94.

DIRECTOR(O&M & VIG.) (on tour)

1 regarding
conferment of
Bharat Ratna
(Posthumously) on
Netaji Subhas
Chandra Bose

287/5513/94
31/5/94

1697/Dir (com)/PH
29/5

2930/105/94
3/5

F-25/10/105/94
4/5/94
1993/10/105/94
4/5/94

JS(A)

The Supreme Court admitted the Transfer Petition filed by MHA seeking the transfer of the "Netaji Case" pending in the Calcutta High Court from the High Court to the Supreme Court. The hearing took place yesterday. The next date of hearing is 26 July 1994.

for information.

(Signature)
3/5/94

H.M. has perused.

(Signature)
22/5/94

23/5
ms (Pm)

24/5/94

23/5

cc (P)

(Signature)

JS(A)

28
~~28~~

MINISTRY OF HOME AFFAIRS

Transfer Petition (Civil) No.7 of 1994 read with SLP(Civil) No.628 of 1994 in writ petition C.O.No.6720 (W) of 1993 filed by Shri Bijan Ghosh in the High Court of Calcutta relating to conferment of Bharat Ratna (posthumously) on Netaji Subhas Chandra Bose was listed for final hearing on 26th July, 1994. The matter, however, did not reach that day. Prof. Samar Guha, one of the added Respondents, requested Chief Justice of India to provide him an opportunity to present his case since he is going abroad for quite sometime. Accordingly, Chief Justice allowed him to present his case on 4th August, 1994, but on account of the sad demise of Justice Yogeshwar Dayal, this matter could actually be taken up only on 5th August, 1994 at 4.00 P.M. before a two Member Bench consisting of Hon'ble Chief Justice of India and Shri Justice S. Mohan.

2. Hon'ble Chief Justice of India at the outset allowed Prof. Guha to present his case within 1 hour and 10 minutes. Prof. Guha started his presentation at 4.10 P.M. and finished at 5.25 P.M.

3. At the outset, Prof. Guha pointed out that when the Government of India has not so far declared publicly about the death of Netaji, how the word 'posthumous' has been used while Bharat Ratna on him. He also laid specific emphasis on the word 'closed' while referring to the Government's decision to treat the matter as closed, because his contention ^{was} that the award has not ^{actually} been withdrawn. About the claim of privilege of documents relating to this case, he said that only on three conditions viz. advice to the President which is considered as delicate; matters relating to intelligence which are sensitive in nature and particular types of financial matters, ^{the} He contended that the papers under question are not covered under any of these categories.

2. conferring

x privilege can be claimed.

4. He dwelt at length reiterating the contents of his book "Netaji - Dead or Alive", thereby making out a case that the two inquiries conducted by Shah Nawaz Khan Committee and Khosla Commission were not acceptable and that there is need of an investigative inquiry to solve the mystery involving Netaji's disappearance. He read out excerpts from an article written by him bringing out the need of an investigative inquiry. The contents of this article are more or less picking up of portions from his book "Netaji - Dead or Alive" referred to earlier. He pleaded for a high level investigative inquiry by the sitting or former judges of the Supreme Court to inquire into 7 issues enumerated on page 5 of his article (copy placed below).

x slip 'A'

5. While concluding, Prof. Guha requested for making some further submissions by way of a written document since according to him the time was not sufficient to enable him to present his case in detail. Hon'ble Chief Justice of India agreed to this request of Prof. Guha.

6. At this point, Shri Bijan Ghosh rose up to request the Hon'ble Chief Justice of India to allow him to mention about this case after the arguments on Ayodhya case (which are to be taken up from 8th August onwards) were

...contd/-

~~101~~ -

over. The Chief Justice of India granted his request.
Submitted.

DIRECTOR(O&M & VIG.)

V.P. Bhatia
(V.P. Bhatia)
Under Secretary/8.8.1994.

9-8-94

J.S(A)

For information.

Recd at the office
9.8.94

SS(P)

Ruakias
11/8

SS(A)

10/8

Director

ns (P)
10/8

11/8

2625/Dir (O&M)/A
9/8

4117/SS(A)/94
9/8

5526/SS(A) 2/94
10/8

Additional Secretary(H) vide his note dated 19.4.1996, has desired that relevant files of the cases pending in the Supreme Court should be put up alongwith a self contained note on the case. The facts of the case are briefly as follows.

2. Shri Bijan Ghosh and four other petitioners filed a petition in the Calcutta High Court challenging the declaration of Bharat Ratna posthumously on Netaji Subhash Chandra Bose by the Government of India. A transfer petition has been filed in the Supreme Court under Article 139-A of the Constitution of India on 21.2.1994. This case was listed for hearing on 7.3.94 and 28.3.94. On 2.5.94, the Supreme Court ordered withdrawal of this case from Calcutta High Court to itself for consideration of the issue by a Constitutional Bench. The matter was taken up on 5.8.94 when Prof.Samar Guha, one of the petitioners appeared before the Court to argue his case. Next date of hearing has not yet been fixed.

Submitted for perusal please.

(G.B. SINGH)

UNDER SECRETARY(PUB.&VIG.)

DS(O&M&VIG.)

JS(A)

Perusal of the case

6.5.96

AL(4)

45/85 may contact CASC + confirm 'A' date.

R.S.

6.5.96

JS(A)

6/5/96

VS(Pub)

7/5

Please see
7/5
So(Pub)

148/DS(O&M)96
6/5

2389/SCA/196
6/5

1053/AS(4)96
6/5

- p18/2
vot

PS/Com
roll

p 124/cw
p47/N auto

p48/N auto

The petition filed by Shri Bijan Ghosh and four others challenging the declaration of Bharat Ratna posthumously on Netaji Subhash Chandra Bose by the Government ^{came up} for hearing in the Supreme Court on Friday, the 4th April, 1997 in Court No.3, as item No.44.

2. DS(O&M&VIG.) and the undersigned went to the Supreme Court to brief Shri Altaf Ahmed, Additional Solicitor General. The main issue in this case is regarding declaration of the Bharat Ratna(posthumously) on Netaji Subhash Chandra Bose and the privilege claimed by the Government of certain records pertaining to this case. Shri Altaf Ahmed was briefed about the facts of the case and the concerned papers were shown to him for perusal. Shri Altaf Ahmed desired that we should be present in the Court to hand over the file to him in case Judges wanted to pursue the relevant records.

3. DS(O&M&Vig.) and myself were accordingly present in the Court when the case came up for hearing. However, on the request of the Counsel of the Petitioners, the case was adjourned for four weeks.

Submitted for information please.

G.B. SINGH
(G.B. SINGH)
UNDER SECRETARY(PUB.&VIG.)
8.4.1997.

DS(O&M&VIG.)

JS(A&P&S)

May also kindly see

Hebitalthuman
22.4.97

AS/A
SS(CS)

R.
22.4.97

2315/SS/05/97
22/4

file
23/4/97

De/orig/ind
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SS(A&P&S)

US(P&V)

23/4
23/4

23/4/97
P

1583/DS(08/23/97)
22/4/97

File received today 22/4

2095/JS(A)/97
22/4

1418/AS/11/97
22/4

2-34

L appearing on
our behalf

2356 / 364157
615
662510
67197

[Signature]
P. SINGH

UNDER SECRETARY (PUB. & VIG.)

Reynolds 6.5.97

JS (A4 PG)

Wetland near
6-5-97

~~OS/OR/VIF)~~

6/7/50 (pub)

The petition filed by Shri Bijan Ghosh and others & bunched together challenging the declaration of the Bharat Ratna posthumously on Netaji Subhash Chandra Bose by the Government came up for hearing in the Supreme Court today in Court No.10 as item No.9.

2. The undersigned went to the Supreme Court and met Shri P. Parameswaran. Thereafter, Shri Parameswaran took me to Shri Altaf Ahmed, Additional Solicitor General appearing on our behalf in this case. Shri Ahmed was briefed about the facts of the case and the concerned file was shown to him for perusal. He was also given the copies of the Statutes and Regulations relating to the Bharat Ratna and Padma Awards. Shri Ahmed desired that I should be present in the Court to hand over the file to him in case Judges wanted to pursue the relevant records.

3. The undersigned was accordingly present in the Court when the case came up for hearing. Shri Sumar Guha alongwith his counsel appeared. Shri Guha raised the point that when the Government has not so far declared publically about the death of Netaji Subhash Chandra Bose, how the word posthumous has been used while conferring Bharat Ratna on him. He also raised the issue of word 'closed' while referring to the Government decision to treat the matter as closed. He dwelt at length reiterating the contents of his book 'Netaji' - dead or alive', thereby making out a case that the two inquiries conducted by Shah Nawaz Khan Committee and Khosla Commission were not acceptable and that there is need of an investigative inquiry to solve the mystery involving Netaji's disappearance. After hearing his views, the Judges pointed out that the main issue before them is about the declaration of the Bharat Ratna posthumous on Netaji Subhash Chandra Bose and they are not concerned with the other issues raised by Shri Guha.

4. Shri Ahmed gave copies of the Statutes and Regulations relating to Bharat Ratna to the Hon'ble Judges and referred to Rule 8 which provides that the names of persons upon whom the declaration is conferred shall be published in the Gazette of India and a register of such recipients shall be maintained under the directions of the President. He also pointed out to Rule 10 which provides for the cancellation or annulment of the award. He stated that since the notification has not been issued in this case, the question to cancel the award does not arise. He also referred to the submission made in the affidavit that the matter has been treated as closed.

5. After hearing arguments of both the parties, the Judges reserved their order. The Court will pass appropriate order in due course.

Submitted please.

For information phase

(G.B. SINGH)
RY(PUB.&VIG.)
29.7.1997.

DS(O&M&~~VIG.~~)

May 30.7.97

JS(AA96)

$$\underline{A \setminus (A)}$$

Wetfallwaal

31.7.97

JS / A & PG / 4/1998

DS (Q1 & V) US (Pals)

34157 AS 11/17
31/7

3359/25/000497-
31/7/92

~~Foodscar 57~~

PUBLIC SECTION

A copy of judgment regarding the case relating to the conferment of Bharat Ratna Award to Sh Netaji Subhash Chandra Bose filed by Sh Bijon Ghosh & others (No.628/94) has been obtained from the Supreme Court today, which may please be seen at F/X.

Sa. K. K.
11/10/97

Pl. Sp. 2
11/10/97

S. S. P.
11/10

Indian
Express
dt. 3.5.94

LEGAL BRIEFS

SC order to transfer Netaji case to Delhi

NEW DELHI: - The Supreme Court directed on Monday the transfer of a writ petition by an advocate, Bijan Ghosh and others, pending in the Calcutta High Court objecting to the conferment of the Bharat Ratna to Netaji Subash Chandra Bose posthumously in 1992. Chief Justice M.N. Venkatchaliah and Justice S. Mohan said that on July 26 they would hear and decide the question of whether the Union of India could claim privilege on the documents concerning the decision to award the honour to the great Indian patriot and thereafter its decision not to proceed with it as it had produced adverse reaction among his followers. Professor Samar Guha said that there was no proof that Netaji Bose had died at all.

Plea against HC order dismissed

NEW DELHI: Chief Justice M.N. Venkatchaliah and Justice S. Mohan dismissed at the Supreme Court on Monday a petition by a former Minister of the Orissa Government B.P. Mohanty, against the Orissa High Court order disallowing his objections to the alleged sale at a throwaway price of Rs 15 crores the Chrome Plant of the Orissa Mining Corporation to TELCO.

2

S. K. KUNDU
CENTRAL GOVT. ADVOCATE

1896/93/1041C
26893

Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, Calcutta.
4, K.S. Roy Road, Calcutta - 1

15/B/Home/93 / 688 / 299A

24th August 1993

No. _____

Dated _____

Mrs. (Dr.) Arati Dutta, Advocate
6, Old Post Office st.
Room No. 50, ground floor
Calcutta 1.

Madam,

CO No. 6720(w)/93
Bijan Ghosh
-vs-
UOI & Ors.

You are hereby engaged to appear in the above mentioned case with Shri R.N.Das, sr. advocate on behalf of U.O.I. and its officers. Kindly note that Sh. Amitava Dutta, advocate was engaged earlier in this matter but due to sudden illness he had to withdraw from the case.

I am forwarding herewith a copy of the writ petition, copy of the affidavit of Shri Amiya Nath Bose, copy of the supplementary affidavit of Amiya Nath Bose and a copy of the affidavit on behalf of the added respondent Shri Sushanta Kumar Mitra. The affidavit on behalf of the added petitioner Sri Sunil Krishna Gupta and the supplementary affidavit filed by Sri Bijan Ghosh are not presently available in our record. Kindly contact Shri R.N.Das, sr. advocate for other papers. However, I am approaching the deptt. concerned to send us the necessary papers immediately.

The parawise comments in respect of affidavit on behalf of the added petitioner Sunil Krishna Gupta, parawise comments in respect of the petition filed by Sri Amiya Nath Bose, P/comments in respect of the supplementary affidavit filed by Sri Bijan Ghosh and P/comments in respect of added interim application for injunction filed by Bijan Ghosh as also the P/comments in respect of the main writ petition filed by Sri Bijan Ghosh are being forwarded herewith for preparation of the necessary affidavits immediately. Please note that the matter is due to appear on 1st or 2nd September 1993.

An early action will be highly appreciated.

Yours faithfully,

Encl: as above.

*Back-sheet
in favour of the senior
counsel.*

(S K Kundu)

Copy to : (BY SPEED POST)

Shri V.P.Bhatia, Under Secretary (Pub & Vig.), Ministry of Home Affrs.
North Block, New Delhi 110001. - for information in connection with

p.t.o.

from pp.

your D.C.No.1/27/91/public dt.17.8.93. Kindly send us copies of the affidavit of the added petitioners Sunil Krishna Gupta, copy of supplementary affidavit of Bijan Ghosh and also copy of the interim application for injunction filed by Bijan Ghosh immediately to enable the ld.counsel to prepare the affidavits. This has to be treated as MOST URGENT.

(S K Kundu)

24/8/93

34
WIRELESS MESSAGE

CRASH

3
UNCLASS

FROM: HOME
NEW DELHI.

TO: SHRI S.K. KUNDU,
CENTRAL GOVERNMENT ADVOCATE,
MINISTRY OF LAW & JUSTICE,
DEPARTMENT OF LEGAL AFFAIRS,
BRANCH SECRETARIAT,
4 K.S. ROY ROAD,
CALCUTTA-1.

NO.1/27/91-PUBLIC

DATED: 26-8-1993

REFERENCE YOUR LETTER NO.15/B/Home/93/688/2990 DATED 24TH AUGUST,1993 ADDRESSED TO MRS.(DR.) AARTI DATTA, ADVOCATE IN THE MATTER OF C.O. NO.6720(W)/93 BIJAN GHOSH VERSUS UNION OF INDIA AND OTHERS AND COPY ENDORSED TO ME.(.) WE HAVE NOTED THAT THE PARAWISE COMMENTS SENT BY THIS MINISTRY IN RESPECT OF THE MAIN PETITION, PETITIONS FILED BY THE ADDED CO-PETITIONERS, SUPPLEMENTARY PETITION BY SHRI BIJAN GHOSH AND APPLICATION FOR INJUNCTION HAVE BEEN SENT TO MRS. DATTA(.) PARAWISE COMMENTS IN RESPECT OF THE ADDED CO-PETITIONER, SHRI SUSHANT KUMAR MITRA ARE BEING FINALISED AND WILL BE SENT TO YOU AT THE EARLIEST(.) AS INDICATED BY YOU IN YOUR LETTER ADDRESSED TO MRS. DATTA THAT THE MATTER IS DUE TO APPEAR ON FIRST OR SECOND SEPTEMBER 1993, WE SHALL BE GRATEFUL IF THE COUNTER AFFIDAVITS DULY FINALISED ARE SENT TO THIS MINISTRY WITHOUT ANY FURTHER DELAY TO DO THE NEEDFUL HERE AND RETURN THE SAME TO YOU FOR FORMALLY FILING IN THE HIGH COURT AT CALCUTTA(.) COPIES OF THE AFFIDAVIT OF SHRI SUNIL KRISHNA GUPTA, SUPPLEMENTARY AFFIDAVIT AND APPLICATION FOR INJUNCTION FILED BY SHRI BIJAN GHOSH ARE BEING SENT SEPARATELY BY SPPED POST(.) PLEASE ACKNOWLEDGE THE RECEIPT THEREOF AND KEEP THIS MINISTRY INFORMED OF THE DEVELOPMENTS IN THE MATTER(.)

V.P. Bhatia
(V.P. BHATIA)

UNDER SECRETARY TO THE GOVT. OF INDIA.



(श्री. पी. भाटिया)
(V. P. BHATIA)
अवर सचिव
Under Secretary
गृह मंत्रालय
Ministry of Home Affairs

By - Speed - Post

F.No.1/27/91-Public
Government of India/Bharat Sarkar
Ministry of Home Affairs/ Grih Mantralaya

New Delhi, the 27th August, 1993.

To

Shri S.K. Kundu,
Central Government Advocate,
Ministry of Law & Justice,
Department of Legal Affairs,
Branch Secretariat,
4, K.S. Roy Road, Calcutta-1.

Subject:-C.O.No.6720(W)/93 - Bijan Ghosh Vs. Union of India.

Sir,

Reference your letter No.15/B/Home/93/688/2990 dated the 24th August, 1993, addressed to Mrs.(Dr.) Aarti Datta, Advocate and copy endorsed to me on the subject noted above.

2. As desired by you I am sending herewith copies of the Affidavit of Shri Sunil Krishna Gupta, supplementary Affidavit filed by Shri Bijan Ghosh and an application for injunction filed by Shri Bijan Ghosh. It is requested that early action may be taken for finalising the counter Affidavit on behalf of the Union of India for formally filing in the High Court at Calcutta.³ Kindly acknowledge receipt and keep this Ministry informed of the developments in the matter.

Yours faithfully,

(V.P. Bhatia)

Under Secretary to the Govt. of India.

Sent PM 1020/93
27/8/93

No. 1/27/91 - Public
MINISTRY OF HOME AFFAIRS

Subject:- C.O. No. 6720(w)/93 - Bijan Ghosh
Vs.
U.O.I. & Ors.

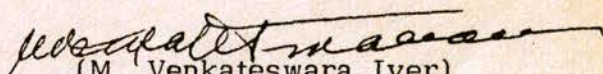
JS(IS.I) may please see the fax message which has been received today evening from the Central Government Advocate at Calcutta regarding the above-mentioned case.

2. I had referred the file on this case to JS(IS.I) for obtaining the comments of his division. I understand that the file is at present with DS(IS.I).

3. In view of the fax message received, it is imperative that the comments of IS.I Division are made available immediately.

4. As regards documents to be produced, we have absolutely nothing on our side. All the relevant documents are with the IS.I Division. The main relief sought by the petitioners is that there should be a fresh enquiry into the circumstances attending the alleged death of Netaji Bose in an air crash. All the documents relating to the enquiries already made in the past will have to be produced before the Calcutta High Court.

5. It will also be necessary for IS.I Division to depute an officer to go immediately to Calcutta to discuss various aspects of the case with the Government Counsel.


(M. Venkateswara Iyer)
Joint Secretary (A)
August 27, 1993.

JS(IS.I)

S.K. KUNDU
CENTRAL GOVT. ADVOCATE

Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, Calcutta.
4, K.S. Roy Road, Calcutta - 1

No. 15/B/Home/92

Dated 27.8.93

To
Shri P C Kannan,
Additional Legal Adviser,
Ministry of Law Justice & C.A.
Department of Legal Affairs,
Shastri Bhawan,
New Delhi 110001

Dear sir,

C.O.No. 6720(w)/93
Bijan Ghosh

-vs-
U.O.I. & Ors.

In connection with the above matter please note that this matter is due to appear on 1st September, 1993 and the Hon'ble court has given direction that the records of the Secretary, Ministry of Home Affairs and the Secretary, Ministry of Human Resources are required to be produced in connection with this case. Incidentally, it may be noted that this case relates to the conferment of 'BHARAT RATNA' Award posthumously on Netaji Subhas Chandra Bose. The petitioners have also prayed for an enquiry into the existence of Shri Bose.

The department has forwarded an affidavit and we have in this case engaged Shri R N Das, special panel counsel to appear on behalf of the respondents. Unfortunately, Shri Amitava Dutta, advocate who was engaged, has fallen ill and therefore Dr. Arati Dutta, advocate has been engaged to prepare the affidavits. I have already written a letter to Shri B P Bhatia, Undersecretary intimating the facts and seeking from him certain copies which are not in our file to enable the ld. counsel to prepare the draft.

It appears that unless a competent person with all the relevant files attends the learned counsel, neither the affidavits will be made ready nor the documents can be produced on 1st September, 1993. Moreover, Shri R N Das, special panel counsel has categorically informed me that he requires a consultation with the department's representative before he settles the affidavits and starts arguing the case.

Kindly see that somebody comes from the department concerned with all the relevant files immediately.

Yours faithfully,

(S K Kundu)

Copy to : Shri V P Bhatia,
Undersecretary (Pub. & Vig)
Ministry of Home Affairs, North Block
New Delhi - 110001.

(S K Kundu)

FAX-MESSAGE

FROM: HOME
NEW DELHI

TO: SHRI S.K. KUNDU
CENTRAL GOVERNMENT ADVOCATE
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
BRANCH SECRETARIAT
4, K.S. ROY ROAD,
CALCUTTA-1.

NO.1/27/91-PUBLIC

DATED: 28-8-1993.

REFERENCE YOUR FAX MESSAGE NO. 15/B/HOME/92 DATED 27TH AUGUST, 1993, ADDRESSED TO SHRI P.C. KANNAN, ADDITIONAL LEGAL ADVISER, MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS AND COPY ENDORSED TO ME IN THE MATTER OF C.O. NO.6720(W)/93 - BIJAN GHOSH VERSUS UNION OF INDIA AND OTHERS(.) YOUR MESSAGE INDICATED TO HAVE BEEN FAXED TO ME HAS NOT REACHED YET(.) AS REGARDS COPIES OF CERTAIN PAPERS VIZ. AFFIDAVIT OF SHRI SUNIL KRISHNA GUPTA, SUPPLEMENTARY AFFIDAVIT AND APPLICATION FOR INJUNCTION FILED BY SHRI GHOSH ASKED FOR BY YOU IN YOUR LETTER DATED 24TH AUGUST, 1993, THE SAME HAVE ALREADY BEEN SENT TO YOU BY SPEED POST ON 27TH AUGUST, 1993(.) WE HAVE NOTED THAT SHRI R.N. DAS, SPECIAL PANEL COUNSEL IS TO APPEAR ON BEHALF OF THE UNION OF INDIA IN THIS CASE AND THE SPECIFIC WISH OF SHRI DAS REGARDING CONSULTATION WITH THIS MINISTRY'S REPRESENTATIVE BEFORE HE SETTLES THE AFFIDAVITS AND STARTS ARGUING THE CASE FIXED FOR FIRST SEPTEMBER 1993(.) BY THE TIME YOUR MESSAGE WAS RECEIVED THROUGH SHRI KANNAN ABOUT THE REQUIREMENT OF REPRESENTATIVE OF THIS MINISTRY FOR CONSULTATIONS THE CONCERNED OFFICER HAVING THE BACKGROUND OF THE FINDINGS OF NETAJI INQUIRY COMMITTEE (1956) AND KHOSLA COMMISSION (1970) AND THEIR ACCEPTANCE BY THE GOVERNMENT OF INDIA AND OTHER RELATED MATTERS INCLUDING ORIGINAL RECORDS, HAS GONE OUT OF DELHI AND IS SCHEDULED TO RETURN ONLY ON FIRST SEPTEMBER, 1993(.) IN VIEW OF THIS POSITION CONSULTATIONS WOULD NOT BE POSSIBLE WITH SPECIAL PANEL COUNSEL, SHRI DAS BEFORE FIRST SEPTEMBER 1993(.) KINDLY REQUEST HON'BLE COURT TO POSTPONE DATE OF HEARING TO AFFORD TIME TO THIS MINISTRY TO SEND ITS OFFICERS TO CALCUTTA WITH THE RELEVANT PAPERS(.) KINDLY SEEK ATLEAST FOUR WEEKS ADJOURNMENT AND ALSO KEEP THIS MINISTRY INFORMED(.)

*Recd
28/8/93*

[Signature]
(V.P. BHATIA)
UNDER SECRETARY TO THE GOVT. OF INDIA

[Signature]
(V.P. BHATIA)
अवर सचिव
Under Secretary
गृह मंत्रालय
Ministry of Home Affairs

*Please Fax the above
message care of chief Secy.
West Bengal and request
the machine operator to deliver the
message to Shri Kundu at the address
above (Tel. no. 2486221 (Office)
" " 3501860 (Res))*

[Signature]
28/8/93

*Duty Officer, MHA
Control Room*

WIRELESS-MESSAGE

CRASH

UNGLASS

FROM: HOME
NEW DELHI

TO: SHRI S.K. KUNDU
CENTRAL GOVERNMENT ADVOCATE
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
BRANCH SECRETARIAT
4, K.S. ROY ROAD,
CALCUTTA-1.

NO.1/27/91-PUBLIC

DATED: 28-8-1993.

REFERENCE YOUR FAX MESSAGE NO. 15/B/HOME/92 DATED 27TH 1993, ADDRESSED TO SHRI P.C. KANNAN, ADDITIONAL LEGAL ADVOCATE, MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS AND COPY SENT TO ME IN THE MATTER OF C.O. NO.6720(W)/93 - BIJAN GHOSH UNION OF INDIA AND OTHERS(.) YOUR MESSAGE INDICATED THAT YOUR MESSAGE HAD NOT REACHED YET(.) AS REGARDS OF CERTAIN PAPERS VIZ. AFFIDAVIT OF SHRI SUNIL KRISHNA SUPPLEMENTARY AFFIDAVIT AND APPLICATION FOR INJUNCTION BY SHRI GHOSH ASKED FOR BY YOU IN YOUR LETTER DATED 24TH 1993, THE SAME HAVE ALREADY BEEN SENT TO YOU BY SPEED POST ON 27TH AUGUST, 1993(.) WE HAVE NOTED THAT SHRI R.N. DAS, PANEL COUNSEL IS TO APPEAR ON BEHALF OF THE UNION OF INDIA IN THIS CASE AND THE SPECIFIC WISH OF SHRI DAS REGARDING CONSULTATION WITH THIS MINISTRY'S REPRESENTATIVE BEFORE HE SETTLES THE CASE AND STARTS ARGUING THE CASE FIXED FOR FIRST SEPTEMBER 1993 BY THE TIME YOUR MESSAGE WAS RECEIVED THROUGH SHRI KANNAN. THE REQUIREMENT OF REPRESENTATIVE OF THIS MINISTRY FOR CONSULTATION OF THE CONCERNED OFFICER HAVING THE BACKGROUND OF THE OF NETAJI INQUIRY COMMITTEE (1956) AND KHOSLA COMMISSION AND THEIR ACCEPTANCE BY THE GOVERNMENT OF INDIA AND RELATED MATTERS INCLUDING ORIGINAL RECORDS, HAS GONE TO DELHI AND IS SCHEDULED TO RETURN ONLY ON FIRST SEPTEMBER 1993 IN VIEW OF THIS POSITION CONSULTATIONS WOULD NOT BE POSSIBLE WITH SPECIAL PANEL COUNSEL, SHRI DAS BEFORE FIRST SEPTEMBER 1993(.) KINDLY REQUEST HON'BLE COURT TO POSTPONE DATE OF HEARING TO AFFORD TIME TO THIS MINISTRY TO SEND ITS OFFICERS TO CONSULT WITH THE RELEVANT PAPERS(.) KINDLY SEEK ATLEAST FOUR WEEKS ADJOURNMENT AND ALSO KEEP THIS MINISTRY INFORMED(.)



BY SPEED POST

Copy also sent by Speed Post to Shri S.K. Kundu, Central Government Advocate, Government of India, Ministry of Law & Justice, Branch 4, K.S. Roy Road, Calcutta-1. Please ensure that four weeks adjournment is granted by the Hon'ble High Court.

(V.P. BHATIA)
UNDER SECRETARY TO THE GOVT.

(V.P. BHATIA)

Under Secretary

Ministry of Law & Justice

Ministry of Law & Justice

(V.R. Bhatia)
Under Secretary to the Govt. of India

10

W-B

3352

2

FROM: HOME
NEW DELHI

TO: SHRI S.K. KUNDU
CENTRAL GOVERNMENT ADVOCATE
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
BRANCH SECRETARIAT
4, K.S. ROY ROAD,
CALCUTTA-1.

NO.1/27/91-PUBLIC

DATED: 28-8-1993.

REFERENCE YOUR FAX MESSAGE NO. 15/B/HOME/92 DATED 27TH AUGUST, 1993, ADDRESSED TO SHRI P.C. KANNAN, ADDITIONAL LEGAL ADVISER, MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS AND COPY ENDORSED TO ME IN THE MATTER OF C.O. NO.6720(W)/93 - BIJAN GHOSH VERSUS UNION OF INDIA AND OTHERS(.) YOUR MESSAGE INDICATED TO HAVE BEEN FAXED TO ME HAS NOT REACHED YET(.) AS REGARDS COPIES OF CERTAIN PAPERS VIZ. AFFIDAVIT OF SHRI SUNIL KRISHNA GUPTA, SUPPLEMENTARY AFFIDAVIT AND APPLICATION FOR INJUNCTION FILED BY SHRI GHOSH ASKED FOR BY YOU IN YOUR LETTER DATED 24TH AUGUST, 1993, THE SAME HAVE ALREADY BEEN SENT TO YOU BY SPEED POST ON 27TH AUGUST, 1993(.) WE HAVE NOTED THAT SHRI R.N. DAS, SPECIAL PANEL COUNSEL IS TO APPEAR ON BEHALF OF THE UNION OF INDIA IN THIS CASE AND THE SPECIFIC WISH OF SHRI DAS REGARDING CONSULTATION WITH THIS MINISTRY'S REPRESENTATIVE BEFORE HE SETTLES THE AFFIDAVITS AND STARTS ARGUING THE CASE FIXED FOR FIRST SEPTEMBER 1993(.) BY THE TIME YOUR MESSAGE WAS RECEIVED THROUGH SHRI KANNAN ABOUT THE REQUIREMENT OF REPRESENTATIVE OF THIS MINISTRY FOR CONSULTATIONS THE CONCERNED OFFICER HAVING THE BACKGROUND OF THE FINDINGS OF NETAJI INQUIRY COMMITTEE (1956) AND KHOSLA COMMISSION (1970) AND THEIR ACCEPTANCE BY THE GOVERNMENT OF INDIA AND OTHER RELATED MATTERS INCLUDING ORIGINAL RECORDS, HAS GONE OUT OF DELHI AND IS SCHEDULED TO RETURN ONLY ON FIRST SEPTEMBER, 1993(.) IN VIEW OF THIS POSITION CONSULTATIONS WOULD NOT BE POSSIBLE WITH SPECIAL PANEL COUNSEL, SHRI DAS BEFORE FIRST SEPTEMBER 1993(.) KINDLY REQUEST HON'BLE COURT TO POSTPONE DATE OF HEARING TO AFFORD TIME TO THIS MINISTRY TO SEND ITS OFFICERS TO CALCUTTA WITH THE RELEVANT PAPERS(.) KINDLY SEEK ATLEAST FOUR WEEKS ADJOURNMENT AND ALSO KEEP THIS MINISTRY INFORMED(.)

28/8
जारी किया
ISSUED

(V.P. BHATIA)
UNDER SECRETARY TO THE GOVT. OF INDIA

BY-SPEED-POST

Copy also sent by Speed Post to Shri S.K. Kundu, Central Government Advocate, Government of India, Ministry of Law & Justice, Branch Secretariat, 4, K.S. Roy Road, Calcutta-1. Please ensure that four weeks adjournment is granted by the Hon'ble High Court.

(V.P. Bhatia)
Under Secretary to the Govt. of India.

(V.P. BHATIA)
अवर सचिव
Under Secretary
गृह विभाग



DO NO. 22(2)/93-*full*

भारत सरकार
GOVERNMENT OF INDIA

विधि, न्याय और कम्पनी कार्य मंत्रालय
MINISTRY OF LAW, JUSTICE
& COMPANY AFFAIRS
विधि कार्य विभाग

DEPARTMENT OF LEGAL AFFAIRS

Shastri Bhavan, New Delhi.

Dated the 1st September, 1993.

Dear Shri Iyer,

Please refer to my telephonic conversation regarding pending case of CO No.6720(w)/93 Bijan Ghosh Vs. UOI & Ors. A copy of the DO letter dt. 27.8.93 received from Shri S.K. Kundu, Central Govt. Advocate is enclosed (a photocopy was furnished to you earlier on 27.8.93). The letter is self-explanatory.

2. I request you to arrange to send necessary instructions to the Central Govt. Advocate at Calcutta.

With regards,

Yours sincerely,

P. Kannan

(P.C. Kannan)

Encl: a.a.

Shri M.V. Iyer,
Joint Secretary,
Ministry of Home Affairs,
North Block,
NEW DELHI.

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U.S. (puf)
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To me

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8/9/93

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S. K. KUNDU
CENTRAL GOVT. ADVOCATE

13
Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, Calcutta.
4, K.S. Roy Road, Calcutta - 1

No. 15/B/Home/92

Dated 27.8.93

To
Shri P C Kannan,
Additional Legal Adviser,
Ministry of Law Justice & C.A.
Department of Legal Affairs,
Shastri Bhawan,
New Delhi 110001

Dear sir,

C.O.No. 6720(w)/93
Bijan Ghosh

-vs-
U.O.I. & Ors.

In connection with the above matter please note that this matter is due to appear on 1st September, 1993 and the Hon'ble court has given direction that the records of the Secretary, Ministry of Home Affairs and the Secretary, Ministry of Human Resources are required to be produced in connection with this case. Incidentally, it may be noted that this case relates to the conferment of 'BHARAT RATNA' Award posthumously on Netaji Subhas Chandra Bose. The petitioners have also prayed for an enquiry into the existence of Shri Bose.

The department has forwarded an affidavit and we have in this case engaged Shri R N Das, special panel counsel to appear on behalf of the respondents. Unfortunately, Shri Amitava Dutta, advocate who was engaged, has fallen ill and therefore Dr. Arati Dutta, advocate has been engaged to prepare the affidavits. I have already written a letter to Shri B P Bhatia, Undersecretary intimating the facts and seeking from him certain copies which are not in our file to enable the ld. counsel to prepare the draft.

It appears that unless a competent person with all the relevant files attends the learned counsel, neither the affidavits will be made ready nor the documents can be produced on 1st September, 1993. Moreover, Shri R N Das, special panel counsel has categorically informed me that he requires a consultation with the department's representative before he settles the affidavits and starts arguing the case.

Kindly see that somebody comes from the department concerned with all the relevant files immediately.

Yours faithfully,

(S K Kundu)

27/8

Copy to : Shri V P Bhatia,
Undersecretary (Pub. & Vig)
Ministry of Home Affairs, North Block
New Delhi - 110001.

(S K Kundu)

5087 (1993)
1.4.93

Spoken to
Shri. Iyer,
JS, 84 HA
on phone 27/8

27/8

Done

30/8

27/8

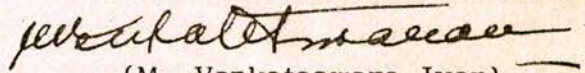
MINISTRY OF HOME AFFAIRS

Subject:- CO No. 6720(w)/93 Bijan Ghosh - vs- Union of India and others.

I send herewith a copy of d.o. letter No. 22(2)/93-Judl. dated 3 September, 1993 received by me today from the Additional Legal Adviser, Ministry of Law, Justice and Company Affairs, on the above cited case. He has enclosed a copy of the letter dated 1.9.1993 from Shri S.K. Kundu, Central Government Advocate at Calcutta. In his letter, Shri Kundu has given a brief report of the hearing which took place on 1.9.1993 in the Calcutta High Court.

2. In a separate reference I have already apprised JS(IS.I) of what transpired in the Calcutta High Court on 1.9.1993. If the relevant documents are not produced before the Court, the Court is likely to take a very serious view. Relevant records have also to be shown to the Special Counsel, who has been engaged in this case, so that he is in a position to draft a proper affidavit in opposition.

3. I would request JS(IS.I) to give this matter his urgent personal attention and decide upon the records to be taken to Calcutta and shown to our Counsel, and also produced before the Court. The concerned officers of IS.I and Administration Divisions should also get ready to go to Calcutta at the earliest possible.


(M. Venkateswara Iyer)
Joint Secretary(A)
September 7, 1993.

JS(IS.I)



P.C. Kannan,
Addl. Legal Adviser.

4813/55(A)/93
7/9

भारत सरकार
GOVERNMENT OF INDIA
विधि, न्याय और कम्पनी कार्य मंत्रालय
MINISTRY OF LAW, JUSTICE
& COMPANY AFFAIRS
विधि कार्य विभाग
DEPARTMENT OF LEGAL AFFAIRS
New Delhi, 3rd September 93.

D.O.F.No.22(2)/93-Judl.

Dear Shri Iyer,

In continuation of my earlier letter of even number dated 1.9.93 regarding pending case of CO No.6720(w)/93 Bijan Ghosh -vs- UOI and others, I am forwarding herewith a photocopy of letter number 15/B/Home/93/692 dated 1.9.93 received from Shri S.K. Kundu, Central Govt. Advocate, Branch Secretariat Calcutta which is self-explanatory.

2. I request you to depute a well conversant officer to meet Shri S.K. Kundu for further necessary action.

With regards.

Yours sincerely,

Encl: As above.

(P.C. Kannan)

Shri M.V. Iyer,
Joint Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

Please discuss.
Keep
7/9/93

Discussed (Vij)
7/9
ns (Pm)

SPEED POST

S.K. KUNDU
CENTRAL GOVT. ADVOCATE

Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, Calcutta.
4, K.S. Roy Road, Calcutta - 1

No. 15/B/Home/93 / 692

Dated 1.9.93

To
Shri P C Kannan,
Addl. Legal Adviser,
Ministry of Law Justice & CA
Deptt. of Legal Affairs,
Shastri Bhawan, New Delhi 110001

Dear sir,

CO No. 6720(w)/93
Bijan Ghosh

-vs-
UOI & Ors.

This is to inform you that the above mentioned case was taken up by the Hon'ble Justice Shyamal Kr. Sen today for hearing and on our prayer His Lordship has been pleased to extend the time for filing Affidavit-in-opposition till 17.9.93, Affidavit in Reply by 21.9.93 and the matter has been directed to appear on 22.9.93. The Secretary, Ministry of Human Resources and the Secretary, Ministry of Home Affairs have been directed to file affidavits explaining why the affidavits could not be filed and/or the records could not be produced today.

Please treat this as VERY URGENT and kindly direct the department to send a competent person with the relevant files to enable him to affirm the affidavits that will be required to be filed and to ~~accompany~~ the two affidavits of the Secretaries of the departments explaining the delay.

Yours faithfully,

(S K Kundu)
1/9/93

Copy to : Shri V B Bhatia, Undersecretary (Pub. & Vig.)
Ministry of Home Affairs, Govt of India,
North Block, New Delhi 110001 - for information
and necessary action.

(S K Kundu)

MINISTRY OF HOME AFFAIRS

Subject:- C.O. 6720(W)/93 - Bijan Ghosh Versus Union of India and Others in the High Court of Calcutta.

This case was discussed yesterday with the Additional Solicitor-General by me along with the Deputy Central Government Advocate.

2. I mentioned that Court Notice has been served in this case upon the Attorney-General of India and the High Court expects the Attorney-General to appear or to be properly represented.

3. The next date of hearing is 29 September, 1993 (the coming Wednesday).

4. The original Court Notice, stated to have been served upon the Attorney-General, does not seem to have been received in this Ministry. However, copies of the papers received from the Department of Legal Affairs are sent herewith. The Department of Legal Affairs ID No. 44(5)/93-Judl dated 16.2.1993 says that the Court Notice in original served upon the Attorney-General is enclosed. However, it has not been received in this Ministry.

5. The Attorney-General is already aware of this case. The Deputy Central Government Advocate may please get in touch with him and arrange for the Attorney-General to be represented in Court on 29 September, 1993.

6. During discussion yesterday, the Additional Solicitor-General suggested that we should seek adjournment on 29.9.1993 after filing the Affidavit claiming privilege in respect of the records. On the next date of hearing, the Additional Solicitor-General will himself appear on behalf of the Union of India. It is possible that the Attorney-General will also be represented by him in the Court.

7. Necessary action may kindly be taken immediately and this Ministry informed today itself about the position.

M. Venkateswara Iyer
(M. Venkateswara Iyer)
Joint Secretary

Shri P. Parmeshwaran, Deputy Central Government Advocate, Central Agency Section, Supreme Court, New Delhi.
MHA ID No. 1/27/91-Public dated 27.9.1993

*Received
27/9/93*

*This may be
sided. The
other 990 may
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with the
file. See
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see (Pukh)

5271/3513/93
27/9

F.No.22(2)/93-Judl.
Government of India
Ministry of Law, Justice & Co. Affairs
Department of Legal Affairs
Judicial Section

....

New Delhi, 23rd September, '93.
(Shastri Bhavan)

To

Shri M.V. Iyer,
Joint Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

Sub: C.O.No.6720(w)/93 (Bijan Ghosh Vs. UOI & others).

Sir,

I am directed to enclose a photocopy of D.O. Letter No.15/B/Home/93/442 A dated 20.9.93 on the subject received from Shri S.K. Kundu, Central Govt. Advocate, Branch Sectt. Calcutta which is self-explanatory.

2. In this connection kindly refer to earlier letter of even number dated 1st September 1993 from Shri P.C. Kannan, Addl. L.A. on the above subject (copy enclosed) It is requested

3. It is requested that needful may be done immediately.

Encl: As above.

(

(U.K. Jha)
Asst. Legal Adviser

L3-9-93



S. K. Kundu

SPEED POST

D.O. No. 15/B/Home/93 / 442 A

Dear Shri Kannan,

This has reference to your D.O.No.22(2)/93-Judl. dt.1st September, 1993 in connection with C.O.No.6720(w)/93 (Bijan Ghosh -vs- Union of India & Ors.). I am to inform you that Shri V.P.Bhatia, Under Secretary (P & V), Ministry of Home Affairs came to Calcutta to have a consultation with the senior counsel and to affirm the affidavits and that he has affirmed the ~~same~~ affidavits ~~from~~ 17th September, 1993. By my earlier letter dt.1st September, 1993, the order that was passed on 1st September 1993 was intimated and it was also intimated that the Hon'ble court has been pleased to direct the Secretary, Ministry of Home Affairs and the Secretary, Ministry of Human Resources to file affidavits explaining why there is delay in producing the records. As far as I understand the same is not yet ready.

As this is a very touchy matter, it would be better to have the affidavits affirmed in that respect so that if it is necessary the same can be produced at the time of hearing of the matter.

With regards,

Yours sincerely,

(S K Kundu)
20/9

Shri P.C.Kannan,
Additional Legal Adviser,
Ministry of Law Justice & Company Affairs, (P & V)
Department of Legal Affairs, North Block,
Shastri Bhawan, New Delhi- 110001.

SPEED
POST

Copy to : Shri V.P.Bhatia, Undersecretary (P&V), Ministry of Home Affrs.
North Block, New Delhi 110001.

(S K Kundu)

Shri Ghosh

8228
22/9/93

19
Phone:
भारत सरकार
GOVERNMENT OF INDIA
विधि और न्याय मन्त्रालय
MINISTRY OF LAW & JUSTICE
(विधि कार्य विभाग)
(DEPARTMENT OF LEGAL AFFAIRS)
शाखा सचिवालय
BRANCH SECRETARIAT
4, किरण शंकर राय रोड, कलकत्ता-700 001
4, K. S. ROY ROAD, CALCUTTA-700 001

20
DO. NR. 22(2)/93-mell

P.C. KANNAN
ADDITIONAL LEGAL ADVISER
PH: 387090.

Government of India
Ministry of Law & Justice
Department of Legal Affairs
Shastri Bhavan, New Delhi.
4, K.S. Dated the 1st September, 1993.

Dated 27.8.93

Dear Shri Iyer,

Please refer to my telephonic conversation regarding pending case of CO No.6720(w)/93 Bijan Ghosh Vs. UOI & Ors. A copy of the DO letter dt. 27.8.93 received from Shri S.K. Kundu, Central Govt. Advocate is enclosed (a photocopy was furnished to you earlier on 27.8.93). The letter is self-explanatory.

2. I request you to arrange to send necessary instructions to the Central Govt. Advocate at Calcutta.

With regards,

Yours sincerely,

P. Kannan
(P.C. Kannan)

Encl: a.a.

93w3
29-93
PB-1/93
Shri M.V. Iyer,
Joint Secretary,
Ministry of Home Affairs,
North Block,
NEW DELHI.

CC to: Shri S.K. Kundu,
Central Govt. Advocate,
Deptt. of Legal Affairs
Branch Secretariat,
4, K.S. Roy Road,
Calcutta-1.

P. Kannan
(P.C. Kannan)
Additional Legal Adviser

S. K. KUNDU
CENTRAL GOVT. ADVOCATE

Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, Calcutta.
4, K.S. Roy Road, Calcutta - 1

No. 15/B/Home/92

Dated 27.8.93

To
Shri P C Kannan,
Additional Legal Adviser,
Ministry of Law Justice & C.A.
Department of Legal Affairs,
Shastri Bhawan,
New Delhi 110001

Dear sir,

C.O.No. 6720(w)/93
Bijan Ghosh

-vs-
U.O.I. & Ors.

In connection with the above matter please note that this matter is due to appear on 1st September, 1993 and the Hon'ble court has given direction that the records of the Secretary, Ministry of Home Affairs and the Secretary, Ministry of Human Resources are required to be produced in connection with this case. Incidentally, it may be noted that this case relates to the conferment of 'BHARAT RATNA' Award posthumously on Netaji Subhas Chandra Bose. The petitioners have also prayed for an enquiry into the existence of Shri Bose.

The department has forwarded an affidavit and we have in this case engaged Shri R N Das, special panel counsel to appear on behalf of the respondents. Unfortunately, Shri Amitava Dutta, advocate who was engaged, has fallen ill and therefore Dr. Arati Dutta, advocate has been engaged to prepare the affidavits. I have already written a letter to Shri B P Bhatia, Under Secretary intimating the facts and seeking from him certain copies which are not in our file to enable the ld. counsel to prepare the draft.

It appears that unless a competent person with all the relevant files attends the learned counsel, neither the affidavits will be made ready nor the documents can be produced on 1st September, 1993. Moreover, Shri R N Das, special panel counsel has categorically informed me that he requires a consultation with the department's representative before he settles the affidavits and starts arguing the case.

Spoken to
Shri. lyar,
JS, 24 HA
on phone 27/8

Kindly see that somebody comes from the department concerned with all the relevant files immediately.

Yours faithfully,

(S K Kundu)

Copy to : Shri V P Bhatia,
Under Secretary (Pub. & Vig)
Ministry of Home Affairs, North Block
New Delhi - 110001.

(S K Kundu)

To me

Rz

30/8

Just

File No. 5087 (w)
Dated 1.9.93

22
P.C. Kannan,
Addl. Legal Adviser.

D.O.F.No.22(2)/93-Judl.

New Delhi, 3rd September 93.

Dear Shri Iyer,

In continuation of my earlier letter of even number dated 1.9.93 regarding pending case of CO No.6720(w)/93 Bijan Ghosh -vs- UOI and others. I am forwarding herewith a photocopy of letter number 15/B/Home/93/692 dated 1.9.93 received from Shri S.K. Kundu, Central Govt. Advocate, Branch Secretariat Calcutta which is self-explanatory.

2. I request you to depute a well conversant officer to meet Shri S.K. Kundu for further necessary action.

With regards.

Yours sincerely,

P.C. Kannan

Encl: As above.

(P.C. Kannan)

Shri M.V. Iyer,
Joint Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

Copy to: Shri S.K. Kundu, Central Govt. Advocate, Branch Sectt. Calcutta, Deptt. of Legal Affairs, 4 K.S. Roy Road Calcutta 1. You are requested to contact Shri M.V. Iyer, Ministry of Home Affairs, North Block, New Delhi, directly.

P.C. Kannan

(P.C. Kannan)

9550-2
6-9-93 p.4/93

23
S. K. KUNDU
CENTRAL GOVT. ADVOCATE

SPEED POST
Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, Calcutta.
4, K.S.Roy Road, Calcutta - 1

No. 15/B/Home/93 / 692

Dated 1.9.93

To
Shri P C Kannan,
Addl. Legal Adviser,
Ministry of Law Justice & CA
Deptt. of Legal Affairs,
Shastri Bhawan, New Delhi 110001

Dear sir,

CO No. 6720(w)/93
Bijan Ghosh
-vs-
UOI & Ors.

This is to inform you that the above mentioned case was taken up by the Hon'ble Justice Shyamal Kr. Sen today for hearing and on our prayer His Lordship has been pleased to extend the time for filing Affidavit-in-opposition till 17.9.93, Affidavit-in-Reply by 21.9.93 and the matter has been directed to appear on 22.9.93. The Secretary, Ministry of Human Resources and the Secretary, Ministry of Home Affairs have been directed to file affidavits explaining why the affidavits could not be filed and/or the records could not be produced today.

During
Please treat this as VERY URGENT and kindly direct the department to send a competent person with the relevant files to enable him to affirm the affidavits that will be required to be filed and to accompany the two affidavits of the Secretaries of the departments explaining the delay.

Yours faithfully,

Re
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Jep
2/9/93
6048/93
(S K Kundu) *1/9/93*

Copy to : Shri V B Bhatia, Undersecretary (Pub. & Vig.)
Ministry of Home Affairs, Govt of India,
North Block, New Delhi 110001 - for information
and necessary action.

(S K Kundu)



P.C. Kannan,
Addl. Legal Adviser.
Ph.384101.

5501/JS(M)/93
8/10/93
S.No.21
2612/JS(M)/93 24
8/10

भारत सरकार
GOVERNMENT OF INDIA
विधि, न्याय और कम्पनी कार्य मंत्रालय
MINISTRY OF LAW, JUSTICE
& COMPANY AFFAIRS

विधि कार्य विभाग
DEPARTMENT OF LEGAL AFFAIRS

D.O.F.No.22(2)/93-Judl.

New Delhi, 6th Oct., 1993.

Dear Shri Iyer,

In continuation of earlier letter of even number dated 23rd Sept. '93, of this Deptt. regarding CO No.6720(W)/93 Bijan Ghosh Vs. UOI & Ors. I am enclosing herewith a photocopy of letter No.15/B/Home/93/468 A dated 23.9.93 alongwith original enclosures received from Shri S.K. Kundu, Central Govt. Advocate Branch Sectt. Calcutta which is self-explanatory.

2. You are requested to take appropriate action, on the above matter.

With regards.

Yours sincerely,

P.C. Kannan

(P.C. Kannan)

Encl: As above.

Shri M.V. Iyer,
Joint Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

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To me

S.K. KUNDU
CENTRAL GOVT. ADVOCATE

28
Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, Calcutta.
4, K.S. Roy Road, Calcutta - 1

TO BE FAXED

No. 15/B/Home/93

468A.

Dated 23.9.93

To
Shri P C Kannan,
Additional Legal Adviser,
Ministry of Law Justice & CA
Department of Legal Affairs,
Shastri Bhawan, New Delhi 110001

Dear sir,

Sub: CO No.6720(w)/93
Bijan Ghosh

-vs-
UOI & Ors.

In connection with the above matter I have addressed a D.O. letter on 20th September, 1993 to your goodself as also a copy of the letter dt. 7th September, 1993 which were forwarded by SPEED POST.

I am now forwarding two plain copies of the orders dt. 23.9.93 and order dt. 1st September 1993 which will speak for itself. Incidentally, I would like to draw your attention to the fact that the gist of the order passed on 1st September 1993 was communicated by my letter referred to at the outset. But for some reason or the other, the departments concerned have failed to comply with that and the whole blame had to be swallowed by me which will appear from the order dt. 23rd September 1993.

Please do the needful and oblige.

Yours faithfully,

Encl: plain copy of the
orders dt. 23.9.93
and 1.9.93.

S. K. Kundu
(S K Kundu)
23/9/93

Shere
8/5/94
5/X/93

C.O. No. 6720 (W) of 1993

September
1,
1993.

Bijan Ghosh

-vs-

Union of India & Ors.

Mr. Nigam Chakraborty - For petitioner

Mr. Sushanta Kumar Kundu - For Union of India

Secretary, Ministry of Home Affairs, New Delhi, respondent No. 1 and Secretary, Ministry of Human Resources & Development, New Delhi, respondent No. 2 are directed to file two separate affidavits explaining why the order passed by this Court on 2.8.93 was not carried out by them.

Mr. Kundu, learned Advocate for Union of India prays for time to file affidavit-in-opposition.

The prayer is allowed. Such Affidavit-in-opposition to be filed by 17.9.93, reply thereto to be filed by 21.9.93.

Let this matter be listed for orders on 22.9.93.

Let plain copies of the order duly countersigned by the Assistant Registrar(Court) be handed over to the learned Advocate for the Union of India as also to the petitioner on usual undertaking to apply for and obtain certified copy of the same, for communication upon respondent Nos. 1 and 2 for compliance of the order.

Self Shyamal Kumar Sen

(Shyamal Kumar Sen, J).

29
C.O. No. 6720 (W) of 1993.

C.O. No. 6720 (W) of 1993.

23.9.93

Delhi, respondent no. 2.

I have also been assured by the learned Advocate on Record of the Union of India that all records as directed by my previous orders will be produced on the next date of hearing.

Mr. Das, however, claims the *in respect of the same as submitted* privilege of this Court that the records will be produced only for perusal of the court.

Petitioner, however, disputes the same.

Let plain copies of the order duly countersigned by the Assistant Registrar, (Court), be handed over to the learned Advocate for the Union of India as also to the petitioner on usual undertaking to apply for and obtain certified copy of the same for communication upon respondent Nos. 1 and 2 for compliance of the order.

Sd/- Shyamal Kumar Sen

(Shyamal Kumar Sen, J.)

High Court of India
Calcutta
23.9.93

C.O. No. 6720 (W) of 1993

23.9.93.

Mr. Bijan Ghosh -(In person,)

Mr. Partha Sengupta - For Added respondent.

Mr. Sunil Gupta,

Mr. Amiya Nath Bose -for the added respondent.

Mr.R.N. Das,

Mr. Susanta Kundu

Mrs. Arati Dutta - For the Union of India.

The order passed by me on September 1, 1993 has not been carried out. It appears that the Advocate on Record of the Union of India could not communicate the said order to the concerned Secretaries who were directed to file affidavits.

The said Advocate on Record has assured this Court that the order passed on September 1, 1993 will be carried out and he prays for extension of time to file such affidavit. As directed by order dated September 4, 1993 and for another date.

The matter is accordingly fixed for hearing on 20th September, 1993 when it is expected that the order passed September 1, 1993 will be carried out by filing two separate affidavits by Secretary, Ministry of Home Affairs, New Delhi respondent No. 1 and Secretary, Ministry of Human Resources & Development, New

Ministry of Home Affairs

S.Nos.1&2(Receipts) F.Rs.

These are communications written by Shri S.K. Kundu, Central Government Counsel at Calcutta to Ministry of Law, Justice & Company Affairs, Department of Legal Affairs, which have been passed on with covering letters to this Ministry. Invariably, it is seen that a copy of these communications which are addressed to Law Ministry are also endorsed to Under Secretary (Pub. & Vig.), Ministry of Home Affairs, but no such endorsement is actually received in this Ministry and the normal route for such communications is Ministry of Law, Justice & Company Affairs, Department of legal Affairs. The so-called letter dated 1st September, 1993 (page 6/cor.) addressed to Shri Kannan and copy to this Ministry has not been received in this Ministry even on date. It would not be out of place to mention here that I personally collected copies of the Orders passed in this case on 1st September, 1993 and 23rd September, 1993, through the courtesy of Shri Kundu when I was in Calcutta for hearing on 22nd September, 1993. Shri Kundu has now written a letter to Shri Kannan (page 8/cor.) wherein he has forwarded two clean copies of the Orders dated 1st September, 1993 and 23rd September, 1993 (already collected by me in person). In this letter, he claims that the gist of the Order passed on 1st September, 1993 was communicated by his letter dated 20th September, 1993. It would be evident from the language of his letter that he failed to make available a copy of the Order dated 1st September, 1993, even upto the time of the next hearing in the case on 23rd September, 1993. The allegation that the Departments concerned failed to comply with the gist of the Order dated 1st September, 1993, is also without any ground because the Affidavit duly sworn-in by H.S. claiming privilege for production of the records relating to conferment of Bharat Ratna on Netaji was taken by me along with the relevant record but on account of considerations of their own, the same was not filed and the situation could not be effectively handled either by Shri Das, Senior Panel Counsel or Shri Kundu. In fact, Shri Kundu himself is responsible for such a situation because he is not responding to our numerous communications asking certain clarifications or sending some material with the result that this Ministry is not aware as to what is happening in the day today progress of the case. It is on account of his this failure that he had to be blamed by the Hon'ble Shri Justice Shyamal Kumar Sen and he had no other option but to swallow this uncalled for situation. As I had telephonically informed JS(A) from Calcutta about alround non-cooperation on the part of Shri Kundu to ensure smooth sailing in the case under reference, it is high time that Shri Kundu is directed that he should make necessary correspondence relating to this case directly with this Ministry so that we receive all the papers in time and not through the Ministry of Law, Justice & Company Affairs in which process sufficient time is consumed when the papers actually reach this Ministry.

2. The above position is submitted for information and ^a suitable directions to Shri Kundu through the Ministry of Law, Justice & Company Affairs.

be given

2652/Dir(Adv)/93
12/10

Director(Adv & Vig.)

(V.P. Bhatia)

Under Secretary/12-10-1993.

J.S(A)

Let us take up
with Min of Law.Lmms
12/10Director may please put up a draft
to Shri Kannan

Dir(Adv)

12-10-93

5574/5510/93
12/10/93

Ref notes on prepage:

D.F.A. put up for kind approval.

An attempt has been made to list out
the communications made by us and the response
received from the reader to them. Enclosing
a copy of "brief contents of communication" may
support our stand.

may kindly see

Lmmd
27/10

2847/Dir(Orn) 6
27/10
5841/55(A)/93
27/X/93

J.S(A)

Draft should be
more specific. Please
re-cut.

~~Re-cut draft~~
27-10-93

lm
28/10

Dir(Orn)

This was discussed with J.S(A)
on 2/11/93. Letter may issue.

us(Pub)

Lmmd
3/11

1/3me 8 return 4/11
4/11
So 1 Pub

L.B. SINATE
DIRECTOR(O&M/VIG.)
PHONE: 301 6489

5 NOV 1993

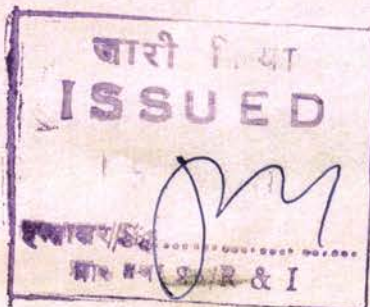
New Delhi, the

Dear Shri Kannan,

Kindly refer to your d.o. letter No. F.No. 22(2)/93-Judl. dated the 6th October, 1993, addressed to Shri M. Venkateswara Iyer, Joint Secretary(Administration), enclosing therewith letter dated 23rd September, 1993 from Shri S.K. Kundu, Central Government Advocate, Branch Secretariat, Calcutta.

2. The contents of para-2 of Shri Kundu's letter have been gone into. It is wrong on the part of Shri Kundu to presume that the concerned Departments have failed to comply with the orders of the Hon'ble Court. In fact, numerous communications have been sent to Shri Kundu since January, 1993 asking for specific information. This Ministry seldom received replies to these queries and on many occasions, we were kept in the dark as to what actually happened there in the Court on various dates of hearings. Even our telephonic conversations including the Wireless Messages/Express Telegrams/Speed Post correspondences had little effect and even today we are yet to have certain Court orders which are vital in processing the case. The enclosed chronological contents of the communications made by us would clearly show the factual position.

3. It is also seen that the communications sent to this Ministry, though few in number, were invariably routed through the Ministry of Law & Justice, Department of Legal Affairs or through the Judicial Division of this Ministry thereby depriving us of valuable time which could have been utilised to provide specific information. It has further been observed from the communications received through the Ministry of Law & Justice, Department of Legal Affairs that all of these have apparently been endorsed to this Ministry, but todate not a single endorsement has actually been received in this Ministry(in fact it appears to be only a formality on paper).

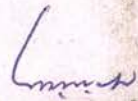


...2/-

4. You would appreciate that this Ministry had never made an attempt to shelve its responsibility and has taken steps with all seriousness which the case deserves.

5. It will be highly appreciated, if keeping in view the importance of this case, Shri Kundu is advised to correspond directly with this Ministry to obviate the possibility of any such uncalled for situation in future.

Yours sincerely,


(L.B. SINATE)

Shri P.C. Kannan,
Additional Legal Adviser,
Ministry of Law & Justice,
Department of Legal Affairs,
Shastri Bhavan,
New Delhi.

32

STATEMENT

S.No.	Date	Brief contents of communications	Remarks
1.	28.1.93	On the basis of a News item dated 22.1.1993, the Senior Central Govt. Advocate, Branch Sectt., Calcutta was requested to supply a copy of the writ petition filed before Shri Justice Umesh Chandra Banerjee in the Calcutta High Court challenging the validity of the Union Govt.'s decision to confer Bharat Ratna (posthumously) on Netaji Subhas Chandra Bose.	On 4-2-1993, Shri Kundu sent a writ petition alongwith a xerox copy of the two communications dated 21st Jan., 1993, and 4th Feb., 1993,- he received from Shri Amitava Datta, Advocate representing Union of India.
		In the two communications, Shri Datta, Advocate informed Central Govt. Advocate that His Lordship passed an order on 21st Jan., 1993 for serving a copy of the writ petition on the learned Attorney General of India.	Order dated 21st Jan., 1993 and Order dated 4th Feb., 93 not sent to this Ministry by Shri Kundu.
		In the communication dated 4th February, 1993, Shri Datta informed that hearing took place on that day and the Hon'ble Court inter alia directed the Central Govt. to produce all the records pertaining to the declaration of the award of Bharat Ratna posthumously to Netaji.	
2.	3.3.93	Wireless Message sent to Shri Kundu requesting therein to move the Hon'ble High Court to grant extension of time for one month.	No reply received to this Message.
3.	4.2.93	Surprisingly, Shri Kundu on 4.2.93 sent a copy of the writ petition to the Chief Secretary to the President of India, Rashtrapati Bhavan (passed on by the President's Secretariat to this Ministry on 10th February, 1993).	
4.	6.4.93	Wireless Message sent to Shri Kundu requesting for moving Hon'ble High Court for granting extension by another month.	Nothing heard from Shri Kundu.
5.	20.4.93	D.O. letter sent by Speed Post to Shri Kundu enclosing therewith the parawise comments and requesting for early finalisation thereof.	
6.	30-4-93	Wireless Message to Shri Kundu requesting for early finalisation of parawise comments as also to move the Hon'ble Court for seeking further extension upto 3rd of June, 1993.	No reply received from Shri Kundu indicating the decision of the Court about grant of time.
7.	14.5.93	Letter written to Shri Amitava Datta, Advocate requesting him for early finalisation of the Affidavit-in-Opposition and also indicating the date upto which Hon'ble Court has granted extension (copy sent to Shri Kundu also).	Nothing heard either from Shri Datta or Shri Kundu.

1.	2.	3.	4.
8.	31.5.93	Express Telegram sent to Shri Datta requesting for early finalisation of the Affidavit-in-Opposition with copy to Shri Kundu.	Nothing heard either from Shri Datta or Shri Kundu.
9.	18.6.93	Express telegram to Shri Datta and copy to Shri Kundu requesting for early finalisation of the Affidavit-in-Opposition.	-do-
10.	21.6.93	A reference made to Shri Kannan, Addl. L.A., Deptt. of Legal Affairs requesting him to issue suitable instructions to Shri Kundu to ensure that the matter is attended to on top priority.	This communication had to be sent as Shri Kundu was not responding to any letters.
11.	19.7.93	Express telegram to Shri Kundu in continuation of the telephonic discussion with him on 15th July, 1993, to return the Affidavit-in-Opposition duly finalised at the earliest.	
12.	22.7.93	A copy of the communication dated 19th July, 1993, addressed by Shri Bijan Ghosh to Attorney General for India pointing out that the matter was heard on 5th July, 1993, but none appeared on behalf of respondent authorities inspite of service of notice. Shri Bijan Ghosh also informed the next date of hearing fixed on 2nd August, 1993 (These papers received through the Department of Legal Affairs in the Ministry on 20th July, 93).	Order dated 5th July, 1993 not received till date.
13.	22.7.93	Express telegram sent to Shri Kundu requesting him to put in an appearance on <u>2nd August, 1993</u> , and to return the Affidavit-in-Opposition duly finalised expeditiously.	2nd August, 1993, order not received in this Ministry.
14.	28.7.93	Express telegram to Shri Kundu requesting for returning the Counter Affidavit duly finalised expeditiously and also to put in an appearance on 2nd August, 1993 and seek extension of time.	Nothing heard from Shri Kundu.
15.	30.7.93	Express telegram to Shri Kundu requesting him to ensure appearance on behalf of U.O.I. on 2nd August, 93 and seek extension for suitable time.	Nothing heard from Shri Kundu.
16.	17.8.93	Speed Post letter to Shri Kundu forwarding there-with the parawise comments in respect of petitions filed by added Respondents, S/Shri Sunil Kumar Gupta and Amiya Nath Bose and also parawise comments in respect of supplementary Affidavit and ad-interim application for injunction filed by Shri Bijan Ghosh. Also requested to indicate the time granted by the Court and to confirm whether an appearance was made on 2.8.93.	Nothing heard from Shri Kundu.

1. 2.

3.

4.

17. 7.9.93

Letter sent by Shri Kundu with reference to his earlier letter dated 1st Sept., 93 (not received to date) forwarding therewith 5 Affidavit-in-Opposition for finalisation and also requesting to make the Affidavits by the Secretary, MHA and Secretary, Ministry of Human Resource Development for producing the records.

Affidavit-in-Opposition as required filed on 17.9.93 and also had personal consultation with Shri R.N. Das, Senior Panel counsel attending to this case for Union of India.

Communicated the next date of hearing on 22nd September, 93 and wanted the Department to file the Affidavits-in-Opposition by 17.9.93.

It would be observed from the above that Court's orders dated 21st January, 1993, 4th February, 1993, 5th July, 1993 and 2nd August, 1993 were not provided to this Ministry by Shri Kundu. It was only at the time of hearing on 23rd September, 1993 that copies of the orders dated 1st September, 1993 and 23rd September, 1993 were procured personally through the good offices of Shri Kundu. However, even on request he regretted his inability to make available copies of the orders dated 21st January, 1993, 4th February, 1993 and 5th July, 1993 (4th February, 1993 Order received in this Ministry as an enclosure to the communication dated 19th July, 1993 from Shri Bijan Ghosh to Attorney General for India referred to above.)

Director (O&M & Vig)

New Delhi, the October, 1993.

Dear Shri Kannan,

Kindly refer to your d.o. letter No.

F.No.22(2)/93-Judl. dated the 6th October, 1993, addressed to Shri M. Venkateswara Iyer, Joint Secretary (Administration) enclosing therewith letter dated 23rd September, 1993 from Shri S.K. Kundu, Central Government Advocate, Branch Secretariat, Calcutta.

2. The contents of para 2 of Shri Kundu's letter have been gone into. It is wrong on the part of Shri Kundu to ^{presume} ~~say~~ that the concerned Departments have failed to comply with the orders of the Hon'ble Court. In fact, numerous communications have been sent to Shri Kundu since January, 93 asking for specific information. This Ministry seldom received replies to these queries and on many occasions, we were kept in the dark as to what actually happened there in the Court on various dates of hearings. Even our telephonic conversations including the Wireless Messages/Express Telegrams/Speed Post correspondence had little effect and even today we are yet to have certain Court orders which are vital in processing the case. The enclosed chronological contents of the communications made by us would clearly show the factual position.

3. It is also seen that the communications sent to this Ministry, though few in number, were invariably routed through the Ministry of Law & Justice, Department of Legal Affairs or through the Judicial Division of this Ministry thereby depriving us of valuable time which could have been utilised to provide specific information.

(26)

It has further been observed from the communications received through the Ministry of Law & Justice, Department of Legal Affairs that all of these have apparently been endorsed to this Ministry, but to date not a single endorsement has actually been received in this Ministry (infact it appears to be only a formality on paper).

4. You would appreciate that this Ministry had never made an attempt to shelve its responsibility and has taken steps with all seriousness ^{which} the case deserves.

5. It will be highly appreciated, if, keeping in view the importance of this case, Shri Kundu is advised to correspond directly with this Ministry to obviate the possibility of any such uncalled for situation in future.

Yours sincerely,

(L.B. SINATE)

Shri P.C. Kannan,
Addl. Legal Adviser,
Ministry of Law & Justice,
Department of Legal Affairs,
Shastri Bhavan,
New Delhi.

36

37

STATEMENT

S.No.	Date	Brief contents of communications	Remarks

1.	28.1.93	<p>On the basis of ^a News item ^{dated 22/1/93} Senior Central Govt. Advocate, Branch Sectt., Calcutta ^{was} requested to supply a copy of the writ petition filed before Shri Justice Umesh Chandra Banerjee in the Calcutta High Court challenging the validity of the Union Govts' decision to confer Bharat Ratna (Posthumously) on Netaji Subhas Chandra Bose <u>(page 4/cor.)</u></p> <p>^{x Central Govt. advocate} In the two communications, Shri Datta ^{advocate} informed ⁶ that His Lordship passed an order on 21st Jan., 1993 for serving a copy of the writ petition on the learned Attorney General of India.</p> <p>In the communication dated 4th February, 1993, Shri Datta informed that hearing took place on that day and the Hon'ble Court inter alia directed the Central Govt. to produce all the records pertaining to the declaration of the award of Bharat Ratna posthumously to Netaji.</p>	<p>On 4-2-93, Shri Kundu sent a writ petition alongwith a Xerox copy of the two communications dated 21st January, 1993, and 4th February, 1993, from Shri Amitava Datta Advocate representing U.O.I. <u>(P.6-7/cor.)</u></p> <p>// Order dated 21st Jan., 93, and not received to date</p> <p>Order dated 4th Feb., 93 not sent to this Ministry by Shri Kundu.</p>
2.	3.3.93	Wireless Message sent to Shri Kundu requesting therein to move the Hon'ble High Court to grant extension of time for one month.	No reply received to --- this Message <u>(p. 42/cor.)</u> .
3.	4-2-93	Surprisingly, Shri Kundu ^{on 4-2-93} sent a copy of the writ petition to the Chief Secretary to the President of India, Rashtrapati Bhavan (passed on by the President's Secretariat to this Ministry on 10th February, 1993) <u>(pp. 46-47/cor.)</u> .	
4.	6-4-93	Wireless Message sent to Shri Kundu requesting for moving Hon'ble High Court for granting extension by another month <u>(page 88/cor.)</u> .	Nothing heard from Shri Kundu.
5.	20-4-93	D.O. letter sent by Speed Post to Shri Kundu ^{enclosing} sending therewith ^{the} parawise comments and requesting for early finalisation thereof <u>(page 89/cor.)</u> .	
6.	30-4-93	Wireless message to Shri Kundu requesting for early finalisation of parawise comments as also to move the Hon'ble Court for seeking further extension upto 3rd of June, 1993 <u>(pp. 95-96/cor.)</u> .	No reply received from Shri Kundu indicating --- the decision. ^{of the Court about grant of time.}
7.	14-5-93	Letter written to Shri Amitava Datta, Advocate requesting him for early finalisation of the Affidavit-in-Opposition and also indicating the date upto which Hon'ble Court has granted extension (copy sent to Shri Kundu also) <u>(pp. 98-99/cor.)</u> .	Nothing heard either from Shri Datta or Sh. Kundu.
8.	1-5-93	Express Telegram sent to Shri Datta requesting for early finalisation of the Affidavit-in-Opposition with copy to Shri Kundu <u>(page 100/cor.)</u> .	— 5 —
9.	18-6-93	Express telegram to Shri Datta and copy to Shri Kundu requesting for early finalisation of the Affidavit-in-Opposition. <u>(P. 131/cor.)</u>	Nothing heard from Sh. Datta or Shri Kundu.

S.N.	Date	Brief contents of communications	Remarks

10.	21-6-93	<p style="text-align: center;">Addl.</p> <p>A reference made to Shri Kannan, LA, Deptt. of Legal Affairs requesting him to issue suitable instructions to Shri Kundu to ensure that the matter is attended to on top priority. (P.135/cor.).</p>	This communication had to be sent as Shri Kundu was not responding to any letters.
11.	19.7.93	Express telegram to Shri Kundu in continuation of the telephonic discussion with him on 15th July, 1993, to return the Affidavit-in-Opposition duly finalised at the earliest (p.137/cor.).	
12.	22.7.93	A copy of the communication dated 19th July, 1993, addressed by Shri Bijan Ghosh to Attorney General for India pointing out that the matter was heard on 5th July, 1993, but none appeared on behalf of respondent authorities inspite of service of notice. Shri Bijan Ghosh also informed the next date of hearing fixed on 2nd August, 1993 (These papers received through the Department of Legal Affairs in the Ministry on 20th July, 1993 (p.139/cor.).	Order dated 5th July, 1993 not received to till date.
13.	22.7.93	Express telegram sent to Shri Kundu requesting him to put in an appearance on 2nd August, 1993, and to return the Affidavit-in-Opposition duly finalised expeditiously. (p.141/cor.).	2nd August, 1993, order not received in this Ministry.
14.	28-7-93	Express telegram to Shri Kundu requesting for returning the Counter Affidavit duly finalised expeditiously and also to put in an appearance on 2nd August, 1993 and seek extension of time (p.142/cor.).	Nothing heard from Shri Kundu.
14.	30-7-93	Express telegram to Shri Kundu requesting him to ensure appearance on behalf of U.O.I. on 2nd August, 1993 and seek extension for suitable time (p.231/cor.).	Nothing heard from Shri Kundu.
15.	17.8.93	Speed Post letter to Shri Kundu forwarding there-with the parawise comments in respect of petitions filed by added Respondents, S/Shri Sunil Kumar Gupta and Amiya Nath Bose and also parawise comments in respect of supplementary Affidavit and ad-interim application for injunction filed by Shri Bijan Ghosh. Also requested to indicate the time granted by the Court and to (Page 233/cor.). Confirm whether an appearance was made on 2-8-93.	Nothing heard from Shri Kundu.
16.	7-9-93	Letter sent by Shri Kundu with reference to his earlier letter dated 1st Sept., 1993 (not received to date) forwarding therewith 5 Affidavit-in-Opposition for finalisation and also requesting to make the Affidavits by the Secretary, MHA and Secretary, Ministry of Human Resource Development for producing the records. Communicated the next date of hearing on 22nd September, 1993 and wanted the Department to file the Affidavits-in-Opposition by 17.9.93.	Affidavit in Opposition as required filed on 17-9-93 and also had personal consultation with Shri R.N. Das, Senior Panel Counsel attending to this case for U.O.I. (page 285/C).

- 3 -

It would be observed from the above that Court's orders dated 21st January, 1993, 4th February, 1993, 5th July, 1993 and 2nd August, 1993 were not provided to this Ministry by Shri Kundu. It was only at the time of hearing on 23rd September, 1993 that copies of the orders dated ~~2nd August, 1993~~, 1st September, 1993 and 23rd September, 1993 were procured personally through the good offices of Shri Kundu. However, even on request he regretted his inability to make available copies of the orders dated 21st January, 1993, 4th February, 1993 and 5th July, 1993 (4th February, 1993 Order received in this Ministry as an enclosure to the communication dated 19th July, 1993 from Shri Bijan Ghosh to Attorney General for India referred to above.).

S. No. 39

2435/93 Public
19/11/93

P.C. Kannan,
Addl. Legal Adviser.
Ph. 384101.

315819100 & M/93
19/11

D.O.No.22(2)/93-Judl.

New Delhi, 18th Nov., 1993.

Dear Shri Kundu,

Please refer to your letter No.15/B/Home/93/468 A dated 23rd Sept., 1993 regarding CO No.6720(W)/93 Bijan Ghosh Vs. Union of India and others.

2. In this connection, we have received a reply from L.B. Sinat, Director(O & M /Vig.) Ministry of Home Affairs which is enclosed herewith for your ready fereference.

3. You are requested to contact directly Shri L.B.Sinat, Director(O & M/Vig.) Ministry of Home Affairs.

With regards,

Yours sincerely,

Encl: a.a.

(P.C. Kannan)

Shri S.K. Kundu,
Central Govt. Advocate,
Department of Legal Affairs,
4 K.S. Roy Road,
Branch Secretariat Calcutta,
Calcutta-1.

Copy to: Shri L.B. Sinat, Director(O&M/Vig.), Ministry of Home Affairs, for information.

P. Kannan
(P.C. Kannan)

ho
19/11
not (Public)

hm
19/11

To ref

S. K. KUNDU
CENTRAL GOVT. ADVOCATE

SPEED POST

No. 15/B/Home/93

853A

Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, Calcutta.
4, K.S. Roy Road, Calcutta - 1

Dated 3.1.94

To
Shri V.P. Bhatia,
Under Secretary (Pub & Vig.),
Ministry of Home Affairs,
North Block,
New Delhi 110001

Dear sir,

CO No. 6720(w)/93
Bijan Ghosh
-vs-
Union of India & Ors.

/of the order dated 6th December, 1993. Kindly find enclosed herewith a xerox copy of the plain copy

Encl: xerox copy of
the order, dt.
6.12.93 as above.

Yours faithfully,

(S K Kundu)
03/01/94

Copy to : Mrs. Arati Dutta, Advocate, 6, Old Post Office St.
Calcutta - for information. She is to apply for
an urgent certified copy of the order dt. 6th Decem-
ber 1993.

(S K Kundu)

4/1/94

To me

October
6,
1993

In re : Bijon Ghosh

Mr. Bijon Ghosh ... Petitioner (In person)

Mr. Altaf Ahmed

Mr. R. N. Das

Mr. Susanta Kundu

Mr. P. Parameswaran .. for Union of India

Mr. Amiya Nath Bose .. Respondent no. 3 (In person)

Mr. Partha Sengupta

Mr. Arunava Ghosh .. for Respondent no. 4

Mr. Nigam Chakraborty

Miss Arundhuti Mukherjee.. for Respondent no. 5

Prof. Samar Guha .. In person

Mr. Bijon Ghosh, petitioner appearing in person files an application for amendment upon notice to the other side. Mr. Altaf Ahmed, Learned Additional Solicitor General of India submits on behalf of Union of India that the application for amendment filed by the petitioner may be allowed by the Court subject to the objection that may be taken at the time of final hearing.

In that view of the matter, the application for amendment incorporating fresh prayers is allowed subject to the objection that may be taken at the time of final hearing.

Union of India will file the counter-affidavit dealing with the allegations made in the amended petition by 8.1.94, reply to such counter-affidavit if there be any, to be filed by 18.1.94.

Let this matter appear in the list as part-heard matter for hearing on 19.1.94 at 12 noon.

It is submitted by Mr. Altaf Ahmed, Learned Additional Solicitor General of India that there is

no notification with regard to the Khosla Commission's recommendation and as such, the said notification cannot be produced in Court. It is further submitted by him that no notification with regard to conferring 'Bharat Ratna' to Netaji Subhas Chandra Bose was issued. Therefore, the said notification also cannot be produced before the Court. Copy of the Press communique issued by the Rashtrapati Bhavan have already been supplied to the parties. Mr. Ahmed, learned Additional Solicitor General also submits that the decision to confer 'Bharat Ratna' to Netaji posthumously as appearing from the Press communique now stands closed.

Learned Additional Solicitor General is directed to produce the decision taken as to how the same has been closed. Let necessary files be produced by the Union of India before the Court on the next date of hearing i.e. 19.1.94, subject to claim of privilege already made by the respondents. Union of India will also disclose by placing relevant records as to what led the Government to review its own decision and to take a fresh decision if there be any.

Supplementary affidavits and all other affidavits filed in Court today be kept with the record.

Let a plain copy of this order duly countersigned by the Assistant Registrar (Court) be handed over to the learned Advocates for the parties on their usual undertakings to apply for and obtain certified copy of the same.

(Shyamal Kumar Sen, J.)

Self-Shyamal Kumar Sen
(Shyamal Kumar Sen, J.)

S. K. KUNDU
CENTRAL GOVT. ADVOCATE

43
242/94 Public
24-1-94

Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, Calcutta
4, K.S. Roy Road, Calcutta - 1

SPEED POST
No. 15/B/Home/93 / 84A

Dated 18.1.94

To
Shri B.P. Bhatia,
Under Secretary,
Ministry of Home Affairs
North Block,
New Delhi 110001

Dear sir,

CO No. 6720(w)/93
Bijan Ghosh
-vs-
UOI & Ors.

Please find herewith enclosed copies of Affidavit-
in-reply filed by Shri Bijan Kumar Ghosh and Mrs. Arundhati
Mukherjee, Advocate on behalf of the respondent No. 5 for
your necessary action thereon.

Encl: As above.

Yours faithfully,

(Signature)
(S K Kundu)
18/01/94

Recd. at 5.30 pm
18/1
29/1

To us (Bus)

So. Pub.

44 (45)
DISTRICT : CALCUTTA.

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

In the matter of:

C.O. No. 6270 (W) of 1993 ;

And

In the matter of:

An application under Article 226 of
the Constitution of India ;

And

In the matter of :

Bijan Ghosh.

.... ... Petitioner.

;Versus:

Union of India & Ors.

.... ... Respondents.

Affidavit in Reply of the added Respondent No. 5.

I, Dr. Susanta Kumar Mitra, son of Late Nilmoni Mitra,
aged about 52 years, residing at 25A, Bagbazar Street,
Calcutta- 700 003, by occupation Investigative Journalist and
a Social Worker, do hereby solemnly affirm and say as follows :-

1. I am the added respondent No.5 in the abovementioned writ application and the proceedings relating thereto and am well acquainted with the facts and circumstances of the case in which I have filed an affidavit affirmed on 2nd July 1993 and a supplementary affidavit affirmed on _____ November, 1993.
2. A copy of the affidavit in opposition for and on behalf of the respondent No.1 purported to be affirmed by Shri V.P. Bhatia on 3rd December, 1993 (hereinafter referred to as the first affidavit) was served on my learned Advocate in Court during the hearing of the above Civil Rule on 6th December, 1993.
3. A copy of the another affidavit in opposition for and on behalf of the respondent No.1 purported to be affirmed by Shri V.P. Bhatia on 3rd January, 1994 (hereinafter referred to as the Second affidavit) was also served on my learned Advocate through a letter dated the 5th January, 1994 of Shri S.K.Kundu, Central Government Advocate.
4. I have gone through both the abovementioned affidavits and have understood the contents and purport thereof.
5. Save and except what are admittedly matters of record and what are specifically admitted hereunder. I deny and dispute each and all allegations in the above mentioned two affidavits in opposition as if the same were set out hereunder and specifically traversed, denied and disputed seriatim.

6. I reiterate each and every statement and submission made in my affidavit and supplementary affidavit referred to in paragraph 1 hereinbefore (hereinafter referred to as my affidavit and my supplementary affidavit) and deny and dispute each and all allegations made in the above two affidavits in opposition as are contrary thereto or inconsistent therewith.

7. Withour prejudice to my rights and contentions with regard to the admisibility of the said two affidavits in opposition for reasons hereinafter stated I am dealing with the allegations contained in the several paragraphs ther@of as hereunder.

8. With reference to paragraphs 1 to 5 of the first affidavit, I do not admit the allegations contained therein except that the deponent appears to be an Under Secretary in the Ministry of Home Affairs, Government of India. I question the competence of the deponent to deposit on behalf of the answering respondent with reference to undisclosed records and contrary to the definite stand taken by the Government of India in the statements made in Parliament by Shri Morarji Desai, the then Prime Minister of India and Shri Dhaniklal Mondal, the then Minister of States for Home Affairs regarding the indecision nature of the finding up of Shah Nawaz Committee and Khosla Commission. I say that those averments in my affidavit which have not been specifically dealt with should be deemed to have been admitted by non-traverse. All allegations contrary to the aforesaid are denied.

9. With reference to paragraphs 6 and 7 of the first affidavit I reiterate the statements made in paragraphs 2 and 5 of my

affidavit

affidavit and deny all allegations contrary thereto. I say that my contention that conferment of the title of 'Bharat Ratna' on Netaji Subhas Chandra Bose is unconstitutional is true and correct. The title of 'Bharat Ratna' not being a military or academic distinction cannot be conferred by the State and the bar under Article 18 of the Constitution of India operates against such conferment. The said constitutional provision cannot be circumvented by describing the said title as an order or decoration. The alleged Press Note dated the 17th April 1968 annexed to the first affidavit can not over ride the said express constitutional provision and in any event the title of 'Bharat Ratna' does not find any mention in the said Press Note. The contention purported to be raised with reference to the said Press Note is, therefore, wholly misconceived and erroneous. All allegations contrary to the aforesaid are denied.

10. With reference to paragraphs 8 and 9 of the first affidavit, I reiterate the statements made in paragraphs 6 and 8 of my affidavit as also hereinbefore and deny all allegations contrary thereto. I reiterate the 'Bharat Ratna' is a title within the meaning of Article 18 of the Constitution of India and the pretended description thereof as a civilian award, does not take it away from the ambit of the said constitutional provision. All allegations contrary to the aforesaid are denied.

11. With reference to paragraphs 10 and 11 of the first affidavit, I reiterate the statements made in paragraphs 9 and 10 of my affidavit as also hereinbefore and deny all allegations

contrary

contrary thereto. I say that none of my contentions is incorpore~~tt~~ as alleged or at all. I further say that the purported acceptance of the Government of India of the findings of Netaji Inquiry Committee and the Khosla Commission do not longer exist either in fact or in law after the statement of the then Prime Minister, Sri Morarji Desai, in the floor of Parliament on 28th August, 1978 in conclusion of the debate on the Khosla Commission report. The Government of India have themselves published a book of Dr. Maikap which renders the alleged story of aircrash at Thaihoku on 18th August 1945 and Netaji's death in the said aircrash false and nugatory. In view of the aforesaid, the said purported findings could not have provided any legitimate basis to the description of the title of Bharat Ratna purported to be conferred on Netaji on 23rd January, 1992 "as posthumous". All allegations contrary to the aforesaid denied.

12. With reference to paragraphs 12 and 13 of the first affidavit, I reiterate the statements made in paragraphs 11 and 12 of my affidavit as also hereinbefore and deny all allegations contrary thereto. The fact that the then Prime Minister, Shri Chandra Sekhar had agreed to an investigative inquiry is amply borne out by the averments made and the correspondence referred to in the affidavit of Professor Sammar Guha and the allegation that no records in that connection are available in the Ministry of Home Affairs is apparently false and/or pretentious. In view of the above mentioned statement of the then Prime Minister, Shri Morarji Desai and the above mentioned book of Dr. Maikap published by the Government of India, which was produced in

Court and referred to during the last hearing and the subsequent availability of various documents and materials, institution of a fresh inquiry is bound to be useful. What the deponent has purported to describe as my personal views do not cease to be facts, as they are, because of such purported description, even if the same be true. All allegations contrary to the aforesaid are denied.

13. With reference to paragraphs 14 of the first affidavit, I reiterate the statements made in paragraph 13 of my affidavit as also hereinbefore and deny all allegations contrary thereto. The role of Justice Khosla in publishing a book namely "Last days of Netaji" is very much relevant to the bonafide correctness and reliability of his purported findings, which now stand rejected in the facts and circumstances stated hereinbefore. The said book was written by Justice Khosla while holding the Commission of Inquiry and published within one month of submission of his report to the Government of India and before the same was placed before the Parliament. The statement of the then Prime Minister, Shri Morarji Desai followed up by the statement of Shri Dhaniklal Mondal in answer to a Lok Sabha question cannot be brushed aside by the deponent under Secretary in the manner in which the same has been purported to be done. The allegations as to the consideration of the matter by the Government in February 1991 and the alleged decision that no useful purpose will be served of holding another inquiry do not in any way entitle the answering respondent to fall back upon the purporting findings and reports of the Netaji Inquiry Committee and the Khosla Commission by over riding the decision

of the Government of India reflected in the above two statements in the floor of the Parliament made by the then Prime Minister and the then Minister of State. It is not a question of the Government of India deciding not to proceed any further in the matter of conferment of Bharat Ratna on Netaji Subhas Chandra Bose, but of such conferment being illegal, unconstitutional and ultra vires and liable to be struck down by this Hon'ble Court. The attitude reflected in the averment made by the deponent regarding the said purported decision itself raise a great amount of apprehension which has a legitimate foundation in such averment itself. All allegations contrary to the aforesaid are denied.

14. With reference to paragraphs 15 and 16 of the first affidavit, I reiterate the statements made in paragraphs 14 and 14A of my affidavit as also hereinbefore and deny all allegations contrary thereto. I say that none of my contentions is incorrect or irrelevant as alleged or at all. The repeated assertion by the deponent about the Government of India having had accepted the findings of the Netaji Inquiry Committee and the Khosla Commission, regardless of the subsequent developments in the matter referred to hereinbefore, which have been attempted to be brushed aside as incorrect and irrelevant fortify my contentions. All allegations contrary to the aforesaid are denied.

16. With reference to paragraphs 17 and 18 of the first affidavit, I reiterate the statements made in paragraphs 14B to

to 14E of my affidavit as also hereinafter and deny all allegations contrary thereto. I specifically deny that any of my contentions is immaterial as alleged or at all. The repeated assertion of the alleged Government acceptance of Netaji's death in an air crash at Taihoku on August 18, 1945 is a reckless attempt in pretended justification of the impugned posthumous Award in deliberate disregard of the established truth that no such air crash or death had taken place as alleged or at all. As a matter of fact it is tantamount censoring the Government's own announcement through its Prime Minister and the Minister of State for Home Affairs on the floor of the House in the year 1978 about the indecisive character of the said earlier findings. It also amounts to censoring the Ministry of Information and Broadcasting of the Government of India, which published a book as late as in June 1993 entitled "Challenge to the Empire - A Study of Netaji" by Dr. S.C. Maikap, who has stated at pages 123-124 of the said book as follows :-

"Yet as fully fitted to a great Commander whom millions loved and worshipped, Netaji lost neither hope nor courage. It was he, who wanted to fight till the last and again agreed on July 8, 1944 to halt actions and retreat. Knowing that to stick on under the conditions would mean nothing less than total annihilation he had issued orders for retreat of the I.N.A. and the Japanese themselves could no longer hold Burma. He flew to Bangkok and thence to Dairen enroute Taihoku. He had already sensed growing difference among the victorious Governments - U.S.A. and U.K. on the one hand and U.S.S.R. on the other. This difference surfaced during the Japanese surrender and little earlier at the San Francisco

Conference of April-June, 1945, Netaji desired to take the advantage of most of these differences, for utilising them in the cause of Indian Independence. With this aim in view, he decided to have his asylum in U.S.S.R. And history is yet to say anything positive about his death or having remaining alive".

All allegations contrary to the aforesaid are denied.

16. With further reference to paragraphs 17 and 18 of the first affidavit I say that the bad treatment meted out to INA personnel in post British India is very much relevant to the facts and circumstances of the case, inasmuch as the same reflects a consistently deliberate policy of the Government of India to denigrate the image of Netaji Subhas Chandra Bose and I.N.A. presently culminating in the impugned award and the naked and reckless defence thereof by pretending to rely on reports and findings, which have failed to survive the test of time and do stand condemned, belied and blown off by subsequent discoveries, records and historical rights. Thus the deponent has engaged himself to swimming against the current of history, truth and the Government's own records. All allegations contrary to the aforesaid are denied.

17. With reference to paragraphs 19 and 20 of the first affidavit, I reiterate the statements made in paragraphs 16 and 17 of my affidavit, as also herinbefore, and deny all allegations contrary thereto. I specifically deny and dispute

that no further action was called for on the part of the Government of India in pursuance of the judgement of the Rajasthan High Court in Nandalal Sharma's writ petition because of the subsequent demise of the said writ petitioner. The Government of India did neither appear nor produce any records in the said writ proceedings and did not call upon Shri Nandalal Sharma to produce his records for quite a long time before his death. The fact remains that the Government of India did not make any attempt to find out the evidence and documents on which Shri Nandalal Sharma relied and which he would have personally produced before the Government of India had he not expired after the said judgement. In any event, there is no whisper by the deponent as to whether any attempt was made by the Government of India to find out such evidence or documents from the members of Nandalal Sharma's family or the friends and associates of the said deceased. As a matter of fact the occasion to consider whether or not a fresh enquiry was required did very much arise inspite of the death of the writ petitioner in view of the mandate of the Rajasthan High Court and the gravity of the issues involved in the said writ proceedings. I say that the impugned conferment of the title of 'Bharat Ratna' on Netaji and not on Mahatma Gandhi is very much relevant and the specious plea taken as to such award having been made in view of the alleged sentiments of the Hon'ble Members of the Rajya Sabha is nothing but a mere pretence, inasmuch as the Government hardly consults the Parliament while making such award of titles year after year. If the award in the instant case has been made in recognition of the public service of the highest order of Netaji, as purported to be alleged, after 45 years of attainment of

independence, the deponent owes an explanation to this Hon'ble Court as to why it took the Government of India such a long period of time to make such evaluation of Netaji's public service of the highest order and why did they require an impetus to act only upon the alleged sentiments of Hon'ble Members of the Rajya Sabha was expressed on 7th August, 1991, as purported to be alleged. The deponent also owes an explanation to this Hon'ble Court why the public service rendered by Mahatma Gandhi was kept out of consideration for the purpose of making a similar award in his favour. It is rather strange that the contentions raised by me in the aforesaid context have been described as irrelevant without giving any explanation on the above aspects of the matter and such strange behaviour does by itself more than establish the correctness and the relevant character of my contentions, which the deponent had no other means to meet except by circumventing the same by recourse to what has been purported to be alleged by him in the said context. All allegations contrary to the aforesaid are denied.

18. With reference to paragraphs 21 to 24 of the first affidavit, I reiterate the statements made in paragraphs 19, 20, 25 and 26 of my affidavit as also hereinbefore and deny all allegations contrary thereto. As regards the allegations made with reference to the letter dated the 22nd July 1946 of Khurshed Naoroji to Louis Fischer the least that can be said about it is that the answer sought to be given with reference thereto is ridiculous. If the said letter bears reference to Bose, as admitted by the deponent, it also bears reference to the possibility of Bose's coming to India with Russian help,

which could happen only if Bose was alive at that point of time, because the said letter written on behalf of Mahatma Gandhi was certainly referring to the entry into India of Bose in person and not the ghost of Netaji Subhas Chandra Bose. It is, therefore, preposterous to allege that the letter does not conclusively say that Bose was alive. There ought to be limit of gimmick and platitude on the part of any litigant pleading before this Hon'ble Court and a representative of the Government of India must be well within such limitations. It is stated without prejudice to the aforesaid that Mahatma Gandhi believed till his death that Netaji did not die in any air crash and was alive. Contemporaneous British Intelligence report also confirms that Shri Nehru had received a letter from Netaji expressing his desire to come to India and both Mahatma Gandhi and Shri Sarat Chandra Bose were aware of the same. The said report was placed before the Shah Nawaz Committee as well as Khosla Commission by the Government of India and the deponent ought to know about it. All allegations contrary to the aforesaid are denied.

19. With reference to paragraph 25 of the first affidavit, I reiterate the statements made in paragraphs 27 of my affidavit, as also hereinbefore and deny all allegations contrary thereto. I reiterate the grounds urged by me in paragraph 27 of my affidavit and specifically deny and dispute all allegations and contentions contrary thereto or inconsistent therewith. I reiterate that 'Bharat Ratna' is a title and say that the explanation purported to be given in paragraphs 2 and 6 of the first affidavit is without any legitimate

foundation. I further say that all allegations and contentions with reference to the said grounds are incorrect, baseless and untenable both in facts as well as in law. All allegations contrary to the aforesaid are denied.

20. With reference to paragraph 26 of the first affidavit I specifically deny and dispute the allegations made therein. I say that my contentions merit consideration and the writ petition is very much maintainable. All allegations contrary to the aforesaid are denied.

21. Each and all allegations in the first affidavit contrary to and save as aforesaid are specifically denied.

22. With reference to paragraphs 1 to 4 of the second affidavit, I do not admit the allegations contained therein that the deponent appears to be an under Secretary to the Government of India, Ministry of Home Affairs. I say that my supplementary affidavit referred to in paragraph 3 of the second affidavit, was duly affirmed, as will appear from the records of the case.

23. With particular reference to sub-paragraphs (a) to (i) of paragraph 4 of the second affidavit, I crave leave to rely on the averments made by the writ petitioner in his affidavit in reply thereto, inasmuch as the allegations made in those paragraphs relate substantially to the original writ petition and the amended writ petition filed by the writ

petitioner. I support the contentions of the writ petitioner with regard to the allegations made in the said sub-paragraphs and also crave leave to treat the same as part thereof.

24. With further particular reference to the said sub-paragraphs of paragraph 4 of the second affidavit, I say that the issues raised in my affidavits including my supplementary affidavit are very much justiciable before this Hon'ble Court and no disputed question of fact incapable of adjudication in any writ proceeding has been raised therein. I further say that the writ petition is very much maintainable and the allegation with reference to violation of legal rights belonging to the writ petitioner and the added respondents is thoroughly misconceived and erroneous. I further say that my affidavits including the supplementary affidavit are not at all liable to be dismissed. All allegations contrary to the aforesaid are denied.

25. With reference to paragraph 6 of the second affidavit I say that the affidavit in opposition filed in response to my affidavit on 6th December 1993 has already been dealt with in the preceding paragraphs and it clearly appears that the answering respondent has failed to traverse the specific averments made in my supplementary affidavit. The very fact that the deponent has failed to traverse even the material averments in my supplementary affidavit and to deal with the materials contained in the annexures thereto goes to show that the answering respondent has no material to controvert the same as well

as the contentions raised with reference thereto. In the circumstances the contents of my supplementary affidavit should be deemed to have been admitted by non-traverse.

26. Each and all allegations in the second affidavit contrary to and save as aforesaid are specifically denied.

27. I submit that none of the above mentioned two affidavits in opposition has either been made or varified properly or in accordance with law and the same are liable to be rejected. The contesting respondents having failed to file any valid or proper return in the present proceedings, the writ petition and the amendments thereto allowed by this Hon'ble Court and incorporated in the amended writ petition should be adjudicated upon on the basis of averments and materials contained therein as well as in my affidavit and supplementary affidavit and orders should be made as prayed for in the ends of justice.

28. Statements made in foregoing paragraphs 1 to 26 (both inclusive) are true to my knowledge while those made in paragraph 27 are my respectful submissions before this Hon'ble Court.

Prepared in my office.

The deponent is known to me.

Advocate,

Clerk to Mr.

Advocate.

Solemnly affirmed before me on

this the day of January, 1994.

Commissioner.

59
DISTRICT : CALCUTTA

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

In the matter of :

C.O.No. 6720 (W) of 1993 ;

And

In the matter of :

An application under Article 226 of
the Constitution of India ;

And

In the matter of :

Bijan Ghosh

.... Petitioner.

- Vs -

Union of India & Ors.

.... Respondents.

AFFIDAVIT IN REPLY

Ms. Arundhati Mukherjee, Advocate,
Bar Association, Room No.11 & 12,
High Court, Calcutta.

60 (61)
DISTRICT: CALCUTTA

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

In the matter of :

C.O. No. 6720 (W) of 1993

And

In the matter of :

An application under Article 226
of the Constitution of India ;

And

In the matter of :

Bijan Ghosh

..... Petitioner,

- Versus -

Union of India and Others

..... Respondents

AFFIDAVIT-IN-REPLY of the Petitioner abovenamed.

I, Bijan Ghosh, son of Shri Benoy Krishna Ghosh, aged about 37 years, by occupation Advocate, practising at High Court Calcutta, residing at B-172, B.E. College, Howrah-3, do hereby solemnly affirm and say as follows : -

Contd...2

1. I am the writ petitioner ~~do~~ named and am fully acquainted with the facts and circumstances of the case.
2. I have gone through the copy served on me of the affidavit-in-opposition purported to be affirmed by Shri V.P. Bhatia on 3rd January 1994 (hereinafter referred to as the said affidavit) and understood the contents and purport thereof.
3. Save and except what are admittedly matters of record and what are specifically admitted hereunder, I deny and dispute each and all allegations in the said affidavit as if the same were set out hereunder and specifically traversed, denied and disputed seriatim.
4. I reiterate the statements and submissions made in the amended writ petition and deny and dispute each and all allegations in the said affidavit as are contrary thereto or inconsistent thereof.
5. With reference to paragraph 4 of the said affidavit, I say that the amended writ petition filed before this Hon'ble Court after the amendments have been allowed and leave granted by this Hon'ble Court, can by no stretch of imagination, be described as purported amended writ petition, nor can the same or the original writ petition be described as or contended to

be not maintainable, as purported to be alleged. The very fact that the deponent has purported to deal with the amended writ petition ~~is~~ along with three affidavits filed by three added respondents by the self-same averments in a blanket form without traversing the contents thereof goes to show the perfunctory nature of the said averments and the utmost casual and cavalier manner in which the deponent purporting to represent the Union of India has sought to ~~advance~~ such thoroughly irresponsible pleadings before this Hon'ble Court. All allegations contrary to the aforesaid are denied.

6. With particular reference to sub-paragraph (a) of paragraph 4 of the said affidavit, I will crave reference to the original writ petition and the prayer portion thereof and do not admit any allegation contrary to the actual contents and purport thereof. I say that the decision to confer the award of Bharat Ratna posthumously on Netaji Subhas Chandra Bose is very much ~~juris~~ justicible before this Hon'ble Court. No record has been produced in support of the alleged decision of the Government of India not to take any further action in the matter and to treat the matter as closed and such said allegation is not worth being taken any notice by this Hon'ble Court, particularly in view of the orders already passed regarding

- 4 -

production of records. I say without prejudice to the aforesaid that no such alleged decision, even if there be any, which is in any event not admitted, can operate against the survival of the cause of action nor can the deliberations before this Hon'ble Court in the present writ proceedings be described as debate, farless of a wholly academic nature. The deponent has shown scant regard to the proceedings before this Hon'ble Court by making such thoughtiess, unfounded and irresponsible allegations. The fact remains that the Government of India still wants to stick to its earlier decision regarding conferment of the Award of Bharat Ratna on Netaji Subhas Chandra Bose posthumously without withdrawing the same, while trying to throttie the proceedings before this Hon'ble Court by raising the alleged plea of an alleged decision to treat the matter as closed by undermining the authority and jurisdiction of this Hon'ble Court to adjudicate the points of controversy involved in the present proceedings by adopting such thoroughly illegal, hostile and totalatarian attitude. All allegations contrary to the aforesaid are denied.

7. With particular reference to sub-paragraph (b) of paragraph 4 of the said affidavit, I will crave reference to the prayers in the original writ petition and do not admit any allegation contrary to the actual contents and purport thereof. I will also crave reference to my affidavit-in-reply to the affidavit-in-opposition dated the 17th September, 1993 filed on behalf of the Government

Contd...5

of India and do not admit any allegation contrary to the actual contents and purport thereof. I reiterate that the purported findings of Netaji Inquiry Committee and the Khosia Commission do not survive after the statement made by the then Prime Minister, Shri Morarji Dessi, on the floor of Lok Sabha on 28th August 1978 in conclusion of the debate of Khosia Commission's report irrespective of the manner of the constitution of the said Commission and the alleged earlier decision of the Government of India to accept its report. Parliament had in fact rejected the said reports through the said debate concluded by the said statement by the then Prime Minister of India. The incredibility of the said report and their findings has been acknowledged by the Government of India by publishing the book of Dr. Maikap produced before this Hon'ble Court during the last hearing and referred to in my application for addition of parties pending before this Hon'ble Court, of which the answering respondent has full knowledge. The report of the Khosla Commission having thus been unsettled, it is futile to contend that any question of reopening the issues settled as a result of the said reports is involved in the instant proceedings. The allegation that there is no credible direct evidence on Netaji Subhas Chandra Bose being still alive is contrary to Government's own records and that is why the records are not being produced and a purported plea of privilege has been raised. On the contrary there is no credible

evidence, doubt or otherwise, of Netaji Subhas Chandra Bose having died. In any event, the deponent can not have any over-riding authority over the investigative process agreed upon by higher dignitaries in recent times, including erstwhile President, Prime Ministers and even the present Minister for External Affairs, the particulars whereof have been furnished in the affidavit of Professor Samar Guha. It is significant that the deponent has not traversed any averments made by Professor Samar Guha in his affidavit. All allegations contrary to the aforesaid are denied.

8. With particular reference to sub-paragraph (c) of paragraph 4 of the said affidavit, I deny and dispute the allegations made therein. I say without prejudice to the aforesaid that the amended writ petition irrespective of the nature of the amendment prayed for and allowed by this Hon'ble Court is very much maintainable and there is no change in the character of the original writ petition as purported to be alleged. All allegations contrary to the aforesaid are denied.

9. With particular reference to sub-paragraph (d) of paragraph 4 of the said affidavit, I reiterate the statements made hereinbefore and deny all allegations contrary thereto. I say that all issues raised in the

Contd..7

amended writ petition as well as in the affidavits filed by the added respondents are justiciable in a Court of law and by this Hon'ble Court. The consideration of averments relating to the proceedings before the Parliament do not raise any non-justiciable issue and the purported plea to the contrary is a mere subterfuge and by raising the plea of non-justiciability in the above context the deponent has made averments in utter disregard of the said sacrosanct proceedings, which are by no means being adjudicated upon. All allegations contrary to the aforesaid are denied.

10. With particular reference to sub-paragraph (e) of paragraph 4 of the said affidavit, I reiterate the statements made hereinbefore and deny all allegations contrary thereto. I specifically deny and dispute that the alleged acceptance of Khosla Commission's report and the impugned decision to confer the award of Bharat Ratna posthumously on Netaji Subhas Chandra Bose and the alleged decision of the Government of India not to proceed further in the matter relate to any question which can not be enquired into by any Court by virtue of Article 74(2) of the Constitution of India. The said purported plea is utterly misconceived and erroneous or a deliberate attempt to throttle the course of Justice by displaying the finger of constitutional bar, which nowhere exists in the facts and circumstances of the case. All allegations contrary to the aforesaid are denied.

11. With particular reference to sub-paragraphs (f) and (g) of paragraph 4 of the said affidavit, I crave reference to the prayers and submissions made by me and the added respondents and do not admit any allegation contrary to the actual contents and purport thereof.

12. With particulars reference to paragraph (i) of paragraph 4 of the said affidavit, I deny and dispute the allegations made therein.

13. With particular reference to the unnumbered concluding sub-paragraph of paragraph 4 of the said affidavit, I specifically deny and dispute the averments made therein.

14. With reference to paragraph 6 of the said affidavit, I say that the averments made therein do not amount to the traversing the affidavits referred to therein and the averments in the said affidavits therefore stand admitted by non-traverse by the respondent purported to be represented by the deponent, as claimed for by him.

15. I submit that the said affidavit has not been made or affirmed either properly or in accordance with law and the same does not constitute any proper or valid return in the present proceedings. The deponent is merely playing with this Hon'ble Court and the judicial process by suppressing and/or misrepresenting the material facts and by trying to give a tricky twist to the present public interest litigation

In utter disregard of all norms of justice and fairplay expected of a public servant. In the premises, the said affidavit should be rejected and the writ application as amended under the orders of this Hon'ble Court should be allowed in the ends of Justice.

16. Statements made in foregoing paragraphs 1 to 14 (both inclusive) are true to my knowledge, while those made in paragraph 15 are my respectful submission before this Hon'ble Court.

Sd/- Bijan Ghosh

Prepared in my office.

The deponent is known to me.

Clerk to Mr.

Advocate

Advocate

Solemnly affirmed before me
this the day of January,
1994.

Commissioner.

District: Calcutta

IN THE HIGH COURT AT CALCUTTA

Constitutional writ jurisdiction

(Appellate Side)

In the matter of:

C.O.No.6720 (W) of 1993

And

In the matter of:

An application under Article 226 of the Constitution of India;

And

In the matter of:

Bijan Ghosh

... Petitioner

- Vs -

Union of India & Ors.

... Respondents.

Affidavit-in-reply of the

Petitioner submitted.

Mr. Bijan Ghosh
Advocate
High Court, Calcutta
Bar Room, Room No. 11

70
District : Calcutta

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

In the matter of :

C.O.No.6720 (W) of 1993 ;

And

In the matter of :

An application under Article 226 of
the Constitution of India;

And

In the matter of :

Bijan Ghosh

... Petitioner

- Vs -

Union of India & Ors.

... Respondents.

Affidavit-in-Reply of the
Petitioner abovenamed.

Mr. Bijan Ghosh
Advocate
High Court, Calcutta
Bar Assn. Room No. 11.

V.P. BHATIA,
UNDER SECRETARY(PUB. & VIG.),
TEL.NO.3012421.

D.O. NO.1/27/91-Public.

Dated: 9-1-1994.

Dear Shri Parmeswaran,

Kindly refer to Central Agency Section Dy. No. 55/94/10/94/U-CAS dated 7.1.1994 forwarding therewith petition for special leave under Article 136 of the Constitution of India in the matter of C.O.No. 6720(W) of 1993 filed by Shri Bijan Ghosh in the High Court at Calcutta challenging the conferment of Bharat Ratna posthumously on Netaji Subhas Chandra Bose together with a petition for stay with a Prayer for ex-parte ad interim stay and another petition for exemption from filing the certified copy of the Order dated 6.12.1993. Shri M. Venkateswara Iyer, Joint Secretary in this Ministry had a word with Addl. Solicitor General on these petitions and the latter confirmed that he has already seen these petitions and gave a green signal for fair typing of these papers. Accordingly, an original copy on green sheet of these petitions together with a covering page reflecting the Index of pages together with 15 spare copies, complete in all respects are sent herewith for formally filing in the Registry of the Supreme Court.

2. As desired in the reference above cited, a Vakalatnama duly signed by the undersigned in your favour is enclosed. The affidavit mentioned in Item 4 duly completed by me is also enclosed. The latest address of the Petitioner and the Respondents in question, as per available records have been incorporated in the petition for special leave to appeal itself.

3. A cheque for Rs.1,000/- in favour of Central Agency Section, Ministry of Law, Justice and Company Affairs, Department of Legal Affairs towards Court fee and other miscellaneous expenses will be sent separately during the day.

4. I shall be grateful if further action for filing this petition for special leave to appeal and other petitions in the Supreme Court is taken very urgently and this Ministry informed of the position.

5. It is also requested that an application may also be filed requesting the Hon'ble Supreme Court for early hearing of the matter keeping in view the fact that the next date of hearing of this case in the High Court at Calcutta is 19th January, 1994. In case an early hearing can be ensured ~~and~~ otherwise, then such an application may not be necessary.

With regards,

Yours sincerely,

(V.P. Bhatia)

Shri P. Parmeswaran,
Addl. Deputy Government Advocate,
Min. of Law & Justice, Central Agency Section,
Supreme Court of India Building, New Delhi.

72

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. _____ OF 1994.

IN THE MATTER OF:

UNION OF INDIA

... PETITIONER

VERSUS

BIJAN GHOSH AND OTHERS

... RESPONDENTS.

INDEX OF PAGES

<u>SL.NO.</u>	<u>PARTICULARS OF DOCUMENTS</u>	<u>PAGES.</u>
1.	Limitation Report	A
2.	List of Dates	B-C
3.	Order dated 6.12.1993 (appealed against)	1-2
4.	Petition for special leave to appeal with Affidavit.	3-9
5.	Annexure-A.	10-18
6.	Petition for stay with a Prayer for ex parte ad interim stay.	19-20.
7.	Petition for exemption from filing the certified copy of the impugned order.	21-22

December
6,
1993

In re : Bijan Ghosh

Mr. Bijan Ghosh :.. Petitioner (In person)

Mr. Altaf Ahmed

Mr. R.N. Das

Mr. Susanta Kundu

Mr. P. Parameswaran .. for Union of India

Mr. Amiya Nath Bose .. Respondent no. 3 (In person)

Mr. Partha Sengupta

Mr. Arunava Ghosh .. for Respondent no. 4

Mr. Nigam Chakraborty

Miss Arundhuti Mukherjee .. for Respondent no. 5

Prof. Samar Guha .. In person

Mr. Bijan Ghosh, petitioner appearing in person files an application for amendment upon notice to the other side. Mr. Altaf Ahmed, Learned Additional Solicitor General of India submits on behalf of Union of India that the application for amendment filed by the petitioner may be allowed by the Court subject to the objection that may be taken at the time of final hearing.

In that view of the matter, the application for amendment incorporating fresh prayers is allowed subject to the objection that may be taken at the time of hearing.

Union of India will file the counter-affidavit dealing with the allegations made in the amended petition by 8.1.94, reply to such counter-affidavit if there be any, to be filed by 18.1.94.

Let this matter appear in the list as part-heard matter for hearing in 19.1.94 at 12 noon.

It is submitted by Mr. Altaf Ahmed, Learned Additional Solicitor General of India that there is

no notification with regard to the Khosla Commission's recommendation and as such, the said notification cannot be produced in Court. It is further submitted by him that no notification with regard to conferring 'Bharat Ratna' to Netaji Subhas Chandra Bose was issued. Therefore, the said notification also cannot be produced before the Court. Copy of the Press Communiqué issued by the Rashtrapati Bhavan have already been supplied to the parties. Mr. Ahmed, learned Additional Solicitor General also submits that the decision to confer 'Bharat Ratna' to Netaji posthumously as appearing from the Press communiqué now stands closed.

Learned Additional Solicitor General is directed to produce the decision taken as to how the same has been closed. Let necessary files be produced by the Union of India before the Court on the next date of hearing i.e. 19.1.94, subject to claim of privilege already made by the respondents. Union of India will also disclose by placing relevant records as to what led the Government to review its own decision and to take a fresh decision if there be any.

Supplementary affidavits and all other affidavits filed in Court today be kept with the record.

Let a plain copy of this order duly countersigned by the Assistant Registrar (Court) be handed over to the learned Advocates for the parties on their usual undertakings to apply for and obtain certified copy of the same.

(Shyamal Kumar
Sen, J.)

sd/-
(Shyamal Kumar Sen, J.)

75 75 3

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. OF 1994.

IN THE MATTER OF:

UNION OF INDIA, REP. BY THE
SECRETARY, MINISTRY OF HOME
AFFAIRS, NEW DELHI. VERSUS

...

PETITIONER

1. BIJAN GHOSH, ADVOCATE,
S/O SHRI BENOY KRISHNA GHOSH,
B-172, B.E. COLLEGE,
HOWRAH-3.
2. SHRI AMIYA NATH BOSE,
S/O SHRI SARAT BOSE,
226/4A, NETAJI SUBHAS CHANDRA BOSE ROAD,
CALCUTTA-700 040.
3. SHRI SUNIL KRISHNA GUPTA,
S/O LATE SHRI TRIPURA
KRISHNA GUPTA,
38, VIDYASAGAR STREET,
CALCUTTA-700009.
4. DR. SUSANTA KUMAR MITRA,
S/O LATE SHRI NILMONY MITRA,
25-A, BAG BAZAR STREET,
CALCUTTA-700006.
5. PROF. SAMAR GUHA,
S/O LATE SHRI BINODE
KUMAR GUHA,
8/2, CENTRAL PARK,
CALCUTTA-700 032.

RESPONDENTS

PETITION UNDER ARTICLE 136
OF THE CONSTITUTION OF INDIA.

To

The Hon'ble Chief Justice of India

...2/-

and His companion Justices of the
Hon'ble Supreme Court of India.

The humble petition of the
petitioner above named.

MOST RESPECTFULLY SHOWETH:

1. That this is a petition for special leave to appeal against the Order dated 6th December, 1993 of the learned Single Judge of the Calcutta High Court in C.O. No. 6720 (W) of 1993.

2. That the petition for special leave to appeal raises substantial questions of law of general public importance as under:

(a) Whether on a true reading of the provision of Sections 123 and 124 of the Evidence Act read with Article 74(2) of the Constitution of India, the High Court was right in law in making an order for the production of the unpublished official records relating to the affairs of the State and which contained communications by Public officers in official confidence.

(b) Whether the High Court was right in law in exercising its jurisdiction under Article 226 of the Constitution of India relating to the policy matter of

...3/-

the state?

- (c) Whether the High Court was right in law in requiring production of the official records when the question in issue has been closed and the writ petition has become infructuous?
- (d) The question regarding decorations or titles and prohibition under Article 18 is pending consideration before this Hon'ble Court in Transfer Petition No: 811-812/1993.

The facts leading to the present appeal are as under:-

- (a) That the respondents herein filed a writ petition under Article 226 of the Constitution of India challenging the declaration of the Award of 'Bharat Ratna' posthumously on Netaji Subhas Chandra Bose on the grounds amongst others that the same is contrary to the provisions of Article 18 of the Constitution of India.
- (b) That the petitioner herein contested the said writ petition by filing a detailed counter. A true copy of the said affidavit in opposition is hereto annexed and marked as Annexure-A.

It may be mentioned here that though the Award was announced posthumously on Netaji, the Award was not notified at all; the stage of notification did not arrive. Considering the fact that the very announcement of the Award provoked adverse reactions in various quarters, and also with a view to avoiding any unnecessary controversy, the Government decided not to proceed any further in the matter and closed the matter.

(c) That on behalf of the petitioner the Secretary of the Government of India, Shri N.N. Vohra filed an affidavit claiming privilege under sections 123 and 124 of the Evidence Act readwith Article 74(2) of the Constitution of India dated 28th September, 1993 in view of the directions given by the High Court to produce all records pertaining to the declaration of the Award.

(d) That on 6.12.1993 when the matter was taken up for hearing by the learned Single Judge of the High Court, it was informed to the Court of the above position and the learned Addl. Solicitor General who appeared on behalf of the Union of India prayed that the writ petition may be dismissed in view of the fact that the matter has been closed by the Government of India and that the alleged cause of action has ceased to exist.

(e) That the Court further directed the petitioner to produce the decision taken as to how the matter has been closed. It was further directed that necessary files be produced by the Government before the Court on the next date of hearing i.e. 19.1.1994.

The Court also directed that relevant records be placed before the Court which would show as to what led the Government to review its own decision and to take a fresh decision.

4. That the petitioner has not filed earlier any special leave petition before this Hon'ble Court against the impugned order.

5. It is further submitted that the petitioner may be exempted from moving the Division Bench of the High Court against the impugned order of the learned Single Judge of

the High Court in view of the special circumstances prevailing in the case if for any reason this Hon'ble Court comes to the view that the petitioner ought to have moved the High Court before approaching this Hon'ble Court.

6. That aggrieved by the Order dated 6.12.1993 of the learned Single Judge of the Calcutta High Court in C.O. No.6720(W) of 1993, the petitioner herein prefers this special leave petition on the following amongst other

G R O U N D S

- (A) The impugned order of the High Court is contrary to law.
- (B) The High Court failed to appreciate that the order made by the High Court directing production of the files relating to the decision to close the matter is beyond the scope of the writ petition and the High Court has no jurisdiction, whatsoever, to give such direction.
- (C) The High Court failed to appreciate that once the matter having been closed the writ petition has become infructuous and the High Court ought to have ordered the disposal of the writ petition on the said ground.
- (D) The High Court failed to appreciate that there cannot be any direction or inquiry with regard to the decision relating to closure of the matter until and unless any complaint is made regarding illegality of such closure or any

(E) malafide on the part of the government or any individual functionary of the government. The High Court failed to appreciate that the order directing production of the records relating to the decision to review the matter and close the matter is outside the scope of the writ and is beyond the jurisdiction of the High Court under Article 226 of the Constitution of India.

(F) In any view of the matter, the order made by the High Court in the instant case is liable to be set-aside.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased:

- (a) to grant special leave to appeal against the order dated 6.12.1993 of the learned Single Judge of the Calcutta High Court in C.O. No. 6720(W) of 1993.
- (b) to pass such other order or orders as this Hon'ble Court may deem fit and proper.

DRAWN BY :

FILED BY:

(B. PARTHASARATHI)
ADVOCATE.

ADVOCATE FOR THE PETITIONER

81

81
9

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. _____ OF 1994.

IN THE MATTER OF:

UNION OF INDIA

... PETITIONER

VERSUS

BIJAN GHOSH AND OTHERS

... RESPONDENTS.

A F F I D A V I T

I, V.P. Bhatia, Under Secretary, Ministry of Home Affairs, North Block, New Delhi-110 001, do hereby solemnly affirm and declare as under:-

That I have gone through the accompanying petition for special leave/ petition for stay, and with reference thereto say that what is stated therein is true and correct on the basis of information derived from the record of the case.

That the petitioner herein has not filed any other petition.

That the Annexure is true and correct copy of its respective original.

VERIFIED AT NEW DELHI:

DATED this the

DEPONENT

DISTRICT CALCUTTA

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

C.O./C.R./NO.6720 (W) OF 1993

In the matter of:

an application under Article 226 of
the Constitution of India

AND

In the matter of :

Bijan Ghosh .. Petitioner

-Versus-

Union of India & Others .. Respondents

Affidavit-in-opposition to the writ petition for and on
behalf of respondent no.1.

I, V.P. Bhatia, son of late Shri M.L. Bhatia aged
about 50 years, by occupation, service, working for gain
at New Delhi in the Ministry of Home Affairs do hereby
solemnly affirm and say as follows:-

1. I am Under Secretary in the Ministry of Home
Affairs, Government of India and am duly authorised and
competent to affirm this affidavit for and on behalf of the
respondent no.1 herein.
2. I have read a copy of the writ petition and under-
stood the purport and contents thereof.
3. Save and except the statements expressly admitted
hereinafter and save and except what appears from the records

all allegations contrary thereto and/or inconsistent therewith shall be deemed to have been denied and disputed by me.

4. Before dealing with the statements or allegations contained in the writ petition, I beg to state the following:-

- a) The Government of India accepted the findings of both the Netaji Inquiry Committee and the Khosla Commission to the effect that Netaji died in an air crash at T ihoku on 18th August, 1945;
- b) The Report of the Khosla Commission along with the Memorandum of Action Taken thereon was laid on the Table of both the Houses of Parliament on 3rd September 1974;
- c) The statement made by Shri Morarji Desai the then Prime Minister in the Lok Sabha on 28th August, 1978 did not amount to outright rejection of the conclusions arrived at by the Netaji Inquiry Committee and the Khosla Commission. Shri Desai had stated that reasonable doubts had been cast on the correctness of the conclusions reached earlier. Also some contradictions in the testimony of witnesses had been noticed and some further

contemporary official documentary records had also become available in the light of all of which it would be difficult to accept the earlier conclusion as decisive. However, Shri Morarji Desai had also added that no useful purpose would be served by having any further inquiry;

- d) It does not appear from the records in the Ministry that any alleged third Inquiry Commission was ordered by Shri Chandra Sekhar, the then Prime Minister;
- e) On 7th August, 1991, in connection with a Special Mention by Shri Pramod Mahajan, M.P. Rajya Sabha, members present had urged the Government to confer Bharat Ratna posthumously on Maulana Abul Kalam Azad and Shri Subhash Chandra Bose. Keeping in view the sentiments of these Hon'ble Members and in recognition of their public service of the highest order, the names of Maulana Abul Kalam Azad and Neta were approved by the President of India for the award of Bharat Ratna and the same were announced on 23rd January, 1992 ;
- f) The award of Bharat Ratna is conferred for exceptional service towards the advancement of Art, Literature and Science and in recognition of public service of the highest order. The decision to confer Bharat Ratna posthumously

on Netaji Subhash Chandra Bose was taken keeping in view his relentless struggle and contribution for the cause of India's freedom. It is further denied that this decision was taken without any application of mind ;

(g) However, keeping in view the widespread public reaction and sentiments of the people and to avoid any unnecessary controversy, the Government decided, notwithstanding the earlier announcement not to take any further action in the matter and to treat the matter as closed ;

(h) The writ Petition is not maintainable in as much as no legal right of the petitioner is affected. The decision to confer honour or an award is purely administrative decision of the Government ;

5. Fully relying on the above, I now beg to deal with the statements or allegations contained in the writ petition.

6. With regard to paragraphs 1,2,3 and 4 of the petition, save as aforesaid and save what appears from the records, all allegations contrary thereto and/or inconsistent therewith are denied and disputed. The contentions of the petitioner in paras 2,3, and 4 are not correct and are denied. The Government accepted the findings of both the Netaji Inquiry Committee and the

...p/5

Khosla Commission to the effect that Netaji died in an air-crash at Taihoku on 18th August, 1945. It was accordingly that the President's announcement of the award of Bharat Ratna to Netaji Subhash Chandra Bose on 23rd January, 1992 was regarded as "posthumous".

The statement made by Shri Morarji Desai, the then Prime Minister, in the Lok Sabha on 28th August 1978 did not amount to outright rejection of the conclusions arrived at by the Netaji Inquiry Committee and the Khosla Commission. Shri Desai only stated that reasonable doubts had been cast on the correctness of the conclusions reached earlier. Also, some contradictions in the testimony of witnesses had been noticed and some further contemporary official documentary records had also become available in the light of all of which it would be difficult to accept the earlier conclusions as decisive. However, Shri Morarji Desai also added that no useful purpose would be served by having any further inquiry.

As regards the alleged Third Inquiry Commission ordered by the then Prime Minister, Shri Chandrasekhar, no records are available in this Ministry.

7. With regard to paragraphs 5,6,7, and 8 of the petition, I reiterate the statements made hereinbefore. I say further that the contention of the petitioner that awarding Bharat Ratna to Netaji Subhash Chandra Bose is a dishonour, rather than an honour,

is his personal view which is incorrect. The decision to confer Bharat Ratna on Netaji Subhash Chandra Bose was taken keeping in view his relentless struggle for the independence of India and his contribution for the cause of India's freedom. It is denied that this decision was taken without any application of mind as alleged. Save as aforesaid and save what appears from the records, all allegations contrary thereto and/or inconsistent therewith are denied and disputed. Keeping in view some of the public reactions and criticisms and to avoid any unnecessary controversy, the Government decided notwithstanding the earlier announcement not to take any further action in the matter and to treat the matter as closed.

8. The statements made in paragraph 9 of the petition are parts of the history.

9. With regard to paragraphs 10, 11 and 12 of the petition I say that the Government have accepted the report that Netaji Subhash Chandra Bose died in an Aircrash on 18th August, 1945, at Taihoku. In view of this, the contentions of the petitioner are not relevant and are denied as aforesaid, and save what appears from the records all allegations contrary thereto are denied and disputed.

10. With regard to paragraphs 13, 14, 15 and 16 of the petition, I say that the contention that freedom of information should be honoured as a fundamental right is his own view and not correct. As regards information relating to the death of Netaji Subhash Chandra Bose,

the stand of the Government has already been made clear in the statements made hereinbefore. The question of believe or not to believe such information is a matter of personal opinion of the petitioner which is not justiciable in a Court of Law. Save as aforesaid and save what appears from the records, all allegations contrary thereto and/or inconsistent therewith are denied and disputed.

11. With regard to paragraph 17 of the petition, I say that the Government had accepted that Netaji Subhash Chandra Bose died on 18th August, 1945 in an Aircrash at Taihoku. Accordingly, conferment of the award of Bharat Ratna on Netaji Subhash Chandra Bose was rightly regarded as a posthumous conferment. Save as aforesaid and save what appears from the records, all allegations contrary thereto are denied and disputed.

12. With regard to paragraph 18 of the petition, I rely on the statements made hereinbefore. I say further that with regard to the documents mentioned in the 'Transfer of Power 1942-47', these have no direct bearing on the aspect of the death of Netaji Subhash Chandra Bose. In view of the acceptance by the Government of India, the death of Netaji Subhas Chandra Bose in the aircrash at Taihoku on 18th August, 1945, the question of the stay of Netaji Subhash Chandra Bose in Soviet Russia after the said period, does not arise. Save as aforesaid and save what appears from the records, all allegations contrary thereto are denied and disputed.

13. The submissions contained in paragraph 20 of the petition are wholly incorrect and denied. I am advised to submit that correct submissions will be made at the time of hearing.

14 The submissions contained in paragraphs 21, 22, 23 and 25 of the petition are incorrect and denied. I am advised to submit that correct submissions will be made at the time of hearing.

15. That the statements made in paragraphs 1,2 and 3 are true to my knowledge and those contained in paragraphs 4,5, 6, 7, 8, 9, 10, 11 and 12 are my informations derived from the records which information I verily believe to be true and those made in paragraphs 13 & 14 are my humble submissions to this Hon'ble Court.

Prepared in my office

Advocate

The deponent is known to me

Clerk to Mr. Advocate.

Solemnly affirmed before me

this the 17th day of September,
1993.

Commissioner

Constitutional Writ Jurisdiction

Appellate Side

C.O/C.R. No. _____ (w) of 1993

In the matter of :

an application under Article 226
of the Constitution of India.

And

In the matter of :

Bijan Ghosh. ... Petitioner

-versus-

Union of India & Ors. Respondents.

Affidavit-in-opposition, by V.P. Bhatia
affirmed this 17th day of September, 1993.

MRS. ARATI DUTTA

Advocate,
6, Old Post Office Street,
Calcutta-1.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A.NO. _____ of 1994.

I N

Special Leave Petition (Civil) No. _____ of 1994.

IN THE MATTER OF :

UNION OF INDIA

...

PETITIONER

VERSUS

BIJAN GHOSH AND OTHERS

...

RESPONDENTS.

PETITION FOR EXPARTE ADINTERIM STAY.

The Hon'ble Chief Justice of India
and His companion Justices of the
Hon'ble Supreme Court of India.

The humble petition of the
petitioner above named

MOST RESPECTFULLY SHOWETH :

1. That the petitioner has filed the special leave petition before this Hon'ble Court against the order dated 6.12.1993 of the learned Single Judge of the Calcutta High Court in C.O. No.6720(W) of 1993.
2. That the petitioner craves leave to refer to the facts and circumstances of the case as stated in the special leave petition, to avoid repetition.
3. That the petitioner has been directed to produce relevant records regarding the decision to close the matter by the Government of India on 19.1.1994 before the learned Single Judge of the High Court of Calcutta.
4. It is submitted that the matter in question is a purely policy matter of the Government of India

and the High Court has no jurisdiction, whatsoever, in the instant case to seek to look at the files. Further, the matter having become infructuous, the High Court has no jurisdiction, whatsoever, to go into the propriety or otherwise of the decision.

5. It is, therefore, submitted that it will be in the interest of justice that the petitioner be granted *ex parte adinterim* stay pending the appeal and pending the Notice of Motion to the respondents.

6. It is further submitted that no prejudice will be caused to the respondents if the stay as prayed for is granted in favour of the petitioner.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased:

- (a) to grant *ex parte adinterim* stay of the operation of the order dated 6.12.1993 of the learned Single Judge of the Calcutta High Court in C.O. No.6720(W) of 1993.
- (b) to confirm prayer (a) BY NOTICE OF MOTION to the respondents.
- (c) to pass such other order/orders as this Hon'ble Court may deem fit and proper.

DRAWN BY :

FILED BY

(B. PARTHASARATHI)
ADVOCATE.

ADVOCATE FOR THE PETITIONER

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. _____ of 1994.

IN

Special Leave Petition (Civil) No. _____ of 1994.

IN THE MATTER OF:

UNION OF INDIA

...

PETITIONER

VERSUS

BIJAN GHOSH AND OTHERS

...

RESPONDENTS.

PETITION FOR DIRECTIONS.

The Hon'ble Chief Justice of India

and His companion Justices of the

Hon'ble Supreme Court of India.

The humble petition of the
petitioner above named.

MOST RESPECTFULLY SHOWETH:

1. That the petitioner has filed the special leave petition before this Hon'ble Court against the order dated 6.12.1993 of the learned Single Judge of the Calcutta High Court in C.O. No.6720(W) of 1993.
2. That the petitioner craves leave to refer to the facts and circumstances of the case as stated in the special leave petition, to avoid repetition.
3. The petitioner has obtained only the signed copy of the impugned order. The petitioner has applied for a certified copy of the impugned order, which has not yet been delivered to the petitioner.
4. The petitioner undertakes to file the certified copy, as and when, it is delivered to the petitioner.
5. It is submitted that it will be in the interests of justice, that the petitioner be exempted from filing

the certified copy of the impugned order alongwith the special leave petition.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased:

- (i) to exempt the petitioner from filing the certified copy of the impugned order alongwith the special leave petition.
- (ii) and pass such other and further orders as this Hon'ble Court may deem just and proper.

DRAWN BY:

FILED BY:

(B. PARTHASARATHI)
ADVOCATE.

ADVOCATE FOR THE PETITIONER

S. K. KUNDU
CENTRAL GOVT. ADVOCATE

95
243/94 Public
24/1/94
95
Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, Calcutta.
4, K.S. Roy Road, Calcutta - 1

SPEED POST

No. 15/XXXXxB/Home/1993/48

Dated 19.1.94

188 (A)

✓
To
Shri V.P. Bhatia,
Under Secretary, (Pub. & Vig.)
Ministry of Home Affairs,
North Block, New Delhi 110001

Dear sir,

C.O. No. 6720(w)/93
Bijan Ghosh
-vs-
UOI & Ors.

The above mentioned case was taken up by the Hon'ble Justice Shyamal Kumar Sen today for hearing when it was submitted before the Court on behalf of the Union of India that the Hon'ble Supreme Court of India has by an order dt. 17th January 1994 stayed all further proceedings in the above mentioned case. The Hon'ble Court has adjourned the matter till next Monday for production of the order dt. 17th January 1994 passed by the Hon'ble Supreme Court.

I am forwarding herewith two affidavits-in-reply filed by Shri Amiya Nath Bose, Bar-at-law and by Shri Samar Guha,

Yours faithfully,

Encl: As above.

(S K Kundu)
19/01/94

Recd at 4.30pm
lm
21/1/94

501 Pub
To me

vs. Amb. Dr. A. K. Chatterjee

26

96

District: Calcutta.

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

In the Matter of:-

An application under Article 226
of the Constitution of India.

-And-

In the Matter of:-

C.O.No.6720 (W) of 1993.

-And-

In the Matter of:-

Bijan Ghosh

..Petitioner.

-Versus-

Union of India and others.

..Respondents.

AFFIDAVIT-IN-REPLY FOR AND ON BEHALF OF PARTY ADDED BY
HON'BLE HIGH COURT.

I, Samar Guha, S/o. of late Binod Kumar Guha, now of age 76 years, residing at 8/2, Central Park, Calcutta - 700032, do hereby solemnly affirm and say as follows:-

1. I have been Added by the Honourable High Court at Calcutta as a Party to the above Writ Petitioner. I have been agitating this national issue involved in this Writ Petition for more than 25 years both inside the Parliament and in public.

Contd..page 2/-

2. I have received and read a copy of the Affidavit affirmed by Shri V.P. Bhatia on January 3, 1994 purportedly intended to be used in opposition to the Writ Petition have understood the purpose and the contents thereof (hereinafter, referred to as the said Affidavit).

3. Having carefully perused the said Affidavit, with utmost humility I state and submit that the said Affidavit is without any substance and does not at all deal with the basic issues raised in the Writ Petition and my Affidavit, and as such, no reliance should be placed thereon. In any event, the allegations/submissions made in the said Affidavit are wholly misconceived, tendentious, politically motivated, vague, devoid of material particulars and not at all tenable in law.

4. I repeat and reiterate that the statement made in my Affidavit affirmed on 1.12.1993 which brings out the pending anxiety of the people of India in regard to collecting all correct facts about disappearance of Netaji Subhas Chandra Bose from August 18, 1945. The statements made in my said affidavit are based on facts and contentions or submissions are tenable in law.

5. Save as what are matters of Court Record and save as what would appear from my said Affidavit dated 1.12.93, I deny and dispute each one of the allegations made in said Affidavit of Mr. Bhatia, as if, set out herein and denied seriatim. In particular, I deny the allegation made in Para 4 (a), 4 (b) (i) of the said affidavit.

6. With further reference to the said allegations made therein, I say that the Report of Khosla Commission or any Commission is not sacrosanct and is always subject to judicial review. I strongly object to the words 'The Government considered that it is futile to re-open the issues settled as a result of Khosla Commission Report at this distance of time, when there is no credible direct evidence that Netaji Subhas Chandra Bose is still alive. I say, that the said observation hurts and wounds the patriotic feeling of the people of India, who are anxious to have thorough, adequate and proper Investigative Inquiry on the issue of disappearance of Netaji. The Report and the Findings of Khosla Commission being altogether perverse and ill-motivated, is no inquiry at all in the eye of law. It is on record that Shri Morarji Desai, as the Prime Minister of the Government in 1978, also shares reasonable doubts about the correctness of the findings of the Shah Nawaz Committee and Khosla Commission as the same are not decisive. Deponent of the said Affidavit has, with deliberate purpose and intention, avoided to deal with and touch the same very important decision of the Government. In the premises, the Government is estopped from opposing the prayer made in the Writ Petition, which has been supported by my Affidavit.

7. With reference to para 4 (a) I say that the issue of finding out the correct facts about disappearance of Netaji from August 18, 1945 is a sacred national issue which is still very painfully haunting hearts of millions of the people of India. I strongly deny that such issue doesn't today survive or the debate on it is wholly or at all academic.

8. In regard to eligations made in Para 4 (1), I deny that the Petition should be dismissed on ground of delay and latches. I say, that it is the wishful and unpatriotic inaction of the Government itself, which has inordinately delayed the matter in spite of continuous public demand from all over India to have a fresh Investigative Inquiry about disappearance of Netaji ~~Subhas~~ Subhas Chandra Bose since independence. Save as aforesaid, I deny the allegation, which has not been expressly traversed herein.

9. I submit that the Writ Petition should be allowed in the interest of justice and fulfilment of our national duty to Netaji Subhas Chandra Bose, - the Man of Destiny of liberation of India as a whole.

10. The statement made in paragraphs 1 to 9 are true to my knowledge and those made in the paragraphs 3, 4, 6, 7, 8 and 9 are based on information, which I believe to be true and those in Paragraphs 1, 2, 5 and 6 are submission to the Honourable Court.

Prepared in my office

SD/- Prady Mukherjee
Advocate.

SD/- Samir Gaha
The deponent is known to me.
SD/- Dipankar Mal
Clerk to
Mr. Prantosh Mukherjee
Advocate.

Solemnly affirmed before me
on this the 18th day of January,
1994.

SD/-
Commissioner.

District: Calcutta.

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

In the matter of:-
An application under Article 226
of the Constitution of India.

-And-

In the matter of:-
C.U.No.6720 (W) of 1993.

-And-

In the matter of:-
Biyan Ghosh Petitioner.
-Vs-
Union of India and ors.
.... Respondents.

AFFIDAVIT-IN-REPLY for and on behalf
of Party Added by Hon'ble High Court.
affirmed by Samar Guha, dated: January
.... 1994.

Mr. Pandip Mukherjee
Advocate
C/o. Mr. Pandip Guha
Advocate
70/1 Post Office Street
1st floor
Calcutta - 700017.

D. G. Mookerjee, M. A., B. L.
Advocate, High Court

102
OFF. : 5, K. S. ROY ROAD, (3RD FLOOR)
CALCUTTA-700001 Phone: 28 3454

RES. : AE-541, BIDHAN NAGAR,
CALCUTTA-700064 Phone: 37-4466

Dated 18th January 1994

To The Sr Advocate (Law)
Ministry of Law, Govt of India
4, K. S. Roy Rd. Cal-1

Dear Sir,

C.O. NO 6720(N) of 1993
Bijai Jann vs U.O.I &

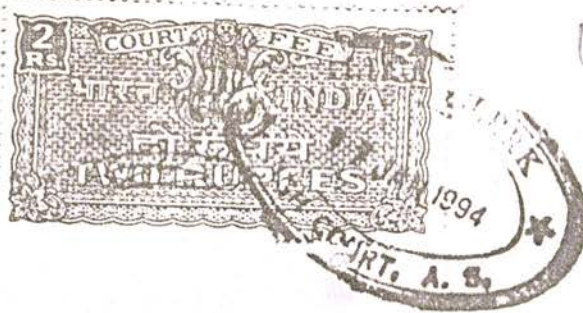
Herewith please find enclosed
two copies of Supplementary Affidavit dt 17-01-94
affirmed by Mr Anirudh Kumar Bose, who
has been as a party to the above
matter, for information and necessary action

Encls As above]

Yours faithfully,

D. G. Mookerjee
Advocate

383/18.1.94 [11]



DISTRICT: CALCUTTA

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)
C.O.NO. 6720(W) OF 1993.

In the matter of :

An application under Article 226
of the Constitution of India :

A N D

In the matter of :

A writ in the nature of Mandamus
and of Certiorari and/or any other
writ or writs, order and/or orders
direction and/or directions etc.:

A N D

In the matter of:

The highest Civilian Award 'Bharat
Ratna' conferred upon Subhas
Chandra Bose posthumously without
having any official declaration by
Union of India of His death and/or
admission of His death; etc.

A N D

In the matter of :

Pijan Ghosh, Advocate practising
at High Court at Calcutta son of
Sri Penoy Krishna Ghosh , B-172,

B.E.College, Howrah..

... Petitioner.

1. The Union of India represented through the Secretary, Ministry of Home Affairs, New Delhi - 110001.
2. The Union of India service through the Secretary, Ministry of Human Resources & Development, New Delhi - 110001.

... Respondents.

Supplementary Affidavit

I, Amiya Nath Bose, son of late Sarat Chandra Bose, aged about 78 years, at present residing at 226/4A, Netaji Subhas Chandra Bose Road, Calcutta - 700 040, do hereby solemnly affirm and say as follows :-

1. I have received a copy of an affidavit in opposition filed by V.P.Bhatia for and on behalf of the Respondent No. 1 and affirmed on 3rd January, 1994.
2. I affirmed an affidavit on 1st of December, 1993, in which I dealt in detail with the findings of the Khosla Commission. Two copies of my Supplementary Affidavit of 1st of December, 1993 were supplied to the Ministry of Law and Justice in Calcutta on 3rd December, 1993 for which a receipt was granted to me. It is strange that V.P.Bhatia has not dealt with the statements contained in my affidavit of 1st of December, 1993, in his affidavit of 3rd January, 1994. Evidently the Law Department of the Ministry of Home Affairs does not function.
3. I filed in these proceedings my first affidavit on 7th of May, 1993, which contains a number of enclosures. I filed a short supplementary affidavit on 22nd June, 1993. My last

1025
supplementary affidavit was filed on the 1st of December, 1993. I did not file any affidavit on 22nd September, 1993, as stated in paragraph 6 (iii) of the affidavit of V.P.Bhatia.

4. It is well settled that in a public interest litigation every party in the matter is in the position of a petitioner. In paragraph 9 of my affidavit of 1st December, 1993, I stated that Jawharlal Nehru, just about a month before his death, himself rejected the findings of the Shah Nawaz Enquiry Committee. If the Prime Minister's Secretariat had taken the trouble it could easily have traced Jawharlal Nehru's letter to me on this subject. It is clear that the Prime Minister's Secretariat is dealing with the question of Netaji's disappearance in a most irresponsible and reckless manner.
5. I have dealt in detail with the findings of Khosla Commission in my affidavit of 1st of December, 1993, I shall not repeat them here. I will only state that G.D.Khosla submitted a false report regarding Netaji's alleged death in an air crash at Taihoku on 18-8-45 under the dictates of Indira Gandhi. Indira Gandhi was not at all concerned to find out the truth about Netaji's disappearance. She was only interested in defaming and dishonouring him. Under Indira Gandhi's dictation G.D.Khosla called Netaji a "Quisling" and a "Japanese Agent" in his report which was submitted to Parliament by Indira Gandhi.
6. In my affidavit of 7th May, 1993, I have annexed photo copy of a letter dated 22nd July, 1946, written by Khurshed Naoroji to Louis Fischer. This letter of Khurshed Naoroji is, in fact, the letter of Gandhi to Louis Fischer. I have known Gandhi intimately from the beginning of 1945 till his assassination. I am certain that British Intelligence informed Gandhi that Subhas Chandra Bose was alive and living in Russia in July, 1946. This letter of Gandhi written by the hand of Khurshed Naoroji completely demolishes the so called air crash story.

7. Louis Fisher was not only a friend of Gandhi, but was also very close to American Administration in 1946. He had known Stalin personally.
8. The following significant sentence appears in Khurshed Naoroji letter:-

" At heart the Indian Army is sympathetic with the Indian National Army. If Bose comes with the help of Russia neither Gandhiji nor Congress will be able to reason with the country. Also(if) Russia for propaganda purposes declares itself an Asiatic country, then there is no hope of an European alliance acceptable to India".

There is a clear hint in the letter that return of Subhas Chandra Bose to India would imperil the political survival of Congress leaders.

9. It is no doubt true that an Act like the Freedom of Information Act, as was passed in the United States, in 1970's have not yet been passed by the Parliament of India. But in my submission right of information is a necessary implication of the Fundamental Rights enshrined in our Constitution. The people of India, the wife and daughter of Netaji and other members of the Bose family are entitled to have the information about the fate of Subhas Chandra Bose in Russia after July, 1946. I enclose herewith photo-copy of a letter written by Netaji's daughter to the Indian Ambassador in Vienna regarding the decision of the President of India to confer "Bharat Ratna" on Netaji, which is marked with the letter "A".
10. It is no doubt correct that advice tendered by Ministers to the President shall not normally be enquired into by any Court Under Clause(2) of Article 74 of the Constitution of India. Notwithstanding the declared finality of the order

of the President under Clause (2) of Article 74, the Court has jurisdiction in appropriate cases to set aside the order of the President. If the President acts on a false information regarding Netaji's alleged death, given to him by the Prime Minister and passes an order in pursuant thereto the Court can certainly set aside that order. If 42 years after the establishment of the Republic of India, the President of India decides to confer "Bharat Ratna" on Netaji, this can only be construed as an insult and dishonour to the Liberator of India. It must be presumed that the President must have acted on collateral considerations. This Court has, therefore, ample powers to set aside the decision of the President to confer "Bharat Ratna " on Netaji. The decision of the Government "to treat matter as closed " does not take away the Court's power to set aside the decision of the President. In my submission, there has been misuse of power on the part of the President of India, when he decided to confer "Bharat Ratna" on Netaji. I am on this question supported by a decision of the Supreme Court of India.

11. President Yeltsin has now abolished the KGB, so access to KGB files will now be possible.
12. John Major, the British Prime Minister, is now making public the British Intelligence files of the last 70 years.
13. Louis Fischer's papers are still available in the archives of the Princeton University in America. His papers will show what steps Louis Fischer took on the letter of Khurshed Naoroji.
14. The American Intelligence files, particularly the report of the American Intelligence Party, which visited Taihoku in September, 1945, will be available in the United States. This intelligence report came to the definite finding that there was no air crash at Taihoku in August, 1945. A copy of this

Report was in the Secretariat of Jawharlal Nehru. This report was deliberately destroyed by Md. Yunus, who is still alive.

I humbly make the following prayers before the Hon'ble Court:-

- i) This Court do set aside the decision of the President to confer the Award of "Bharat Ratna" Posthumously on Subhas Chandra Bose.
- ii) This Court do set aside the findings of the Khosla Commission and declare that the Report of the Khosla Commission will not be binding on the Government of India.
- iii) A Writ of Mandamus be issued directing the Government of India to take all necessary steps for the setting up of a Joint Parliamentary Committee to enquire into the circumstances of Netaji's disappearance.
- iv) Direction be issued to the Government of India to ascertain as to what happened to Netaji Subhas Chandra Bose after July, 1946.
- v) Such other and further orders be made as may be necessary in the circumstances of the case.

VERIFICATION

5. The statements contained in paragraphs 1,2,3,4,5,6,7,8 and 9 of my above affidavit are true to my knowledge. The statements contained in paragraph 10 of my affidavit are my submission to the Hon'ble Court. The statements contained in paragraphs 11,12,13 and 14 of my affidavit are based on information, which I believe to be true.

Prepared in my office

Amiya Nath Bose

(Advocate)

In person.

Solemnly affirmed before me on
this day of January, 1994.

175

COMMISSIONER

Commissioner of Court
High Court, Calcutta
Calcutta

Amiya Nath Bose

The DEPONENT is known to me

Amiya Nath Bose
Barrister-at-Law
High Court, Calcutta

Sri Krishna Das.
known to Mr. B.C. Chakravarty
Advocate

Prof. Anita B. Pfaff

Annexure as referred to in 23
Paragraph no. of the 1991 for Gottsberger
Petition Solemnly Federal Republic of Germany
by on
the 17th day of Jan. 1991
Tel. (0821) 43 48 12

His Excellency
Shri Kamal N. Bakshi
Ambassador of India
Indian Embassy
Kärntnerring

Commissioner of Affidavit
High Court, Appellate Side
Calcutta.

A-1000 Wien

21. Februar 1992

Your Excellency,

Thank you very much for informing me officially about the government's intention to award the Bharat Ratna to my father.

My mother, other members of my family and I ordinarily would welcome honors accorded to my father in memory of contributions made in the context of India's struggle towards independence.

We are aware, however, of the fact that in the past Netaji's achievements and contributions have often not been recognized, particularly when it could be avoided comfortably. Maybe it is not up to me to speculate as to why it was deemed appropriate - at this late stage - to honor him for contributions made more than 45 years ago. But since my mother and I were asked, whether we would receive the award in his place, I cannot help but voice my reservations in the matter. For in my judgement such an honor would have been appropriate in the 1950's, particularly if the award was to be granted also in recognition for achievements during India's quest for independence. Thinking of Netaji in this context so late prompts me, however, to ask, whether his achievements were so minor that he had to stand in line for so long, or so great that they would be remembered even after such a long time. If, on the other hand, the Bharat Ratna was intended as recognition for current achievements in politics, social welfare, the economy and the arts, - and some eminent men and women have received the award for such achievements - I fail to see what relevance my father's work and commitment - much as I personally admire and honor him for that - has in such a context.

Despite my own reservations in this matter I wish to extend my thanks to those who selected him with good intentions. However, in weighing all arguments I cannot help but feel that one cannot honor Netaji today by awarding the Bharat Ratna to him. Forgive me therefore, if I will not be party to an act which in my opinion may well be interpreted as a slight to his memory.

Please do convey our thanks to the government for trying to honor Netaji. I hope, however, that the government will understand and appreciate our point of view.

Sincerely

Anita Pfaff

S.P. TANEJA
DIRECTOR, PUBLIC RELATIONS
(HOME & PERSONNEL)

111
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FOR OFFICIAL USE ONLY

IMPORTANT PRESS CLIPPINGS FOR SPECIAL ATTENTION

The enclosed Press clipping from _____
dated 18-1-94 regarding _____
is forwarded for SPECIAL ATTENTION. In case any clarification or
rejoinder has to be issued, material for press release may kindly
be provided with necessary approval for release to the media.
For better impact in the media, it would help if the press
material could be provided before 4.00 p.m. today.

With best compliments from:
PRINCIPAL INFORMATION OFFICER
GOVERNMENT OF INDIA

20/1/94
aircom (V8/H-5 951#)
ho 211
ns (Pnt)

R-Day awards

Legal hurdle removed

HT Legal Correspondent

NEW DELHI, Jan. 17

The Supreme Court today stayed proceedings on petitions pending before the High Courts of Kerala, Madhya Pradesh and Calcutta challenging conferment of prestigious national awards like Bharat Ratna, Padam Vibhushan, Padma Bhushan and Padma Shri by the President on the occasion of Republic Day.

With this, legal hurdles in conferring these Republic Day awards, which have been embroiled in litigation for the past two years, have been removed.

A three-judge bench comprising Chief Justice M. N. Venkatachaliah, Justice S. R. Pandian and Justice S. Mohan passed the order on two transfer applications and one special leave petition moved by the Union Government challenging the proceedings before the three High Courts in the matter.

The controversy began in August 1992 when a petition was filed in the Madhya Pradesh High Court questioning the constitutional validity of these awards on grounds that the Constitution had abolished all titles. The Jabalpur Bench of the High Court had on Aug. 25, 1992, while admitting the petition, directed the Union Government not to award these titles till further orders. Another petition was filed before the Kerala High Court, but it did not grant a stay.

Even though the High Court had vacated the stay on Jan. 20, 1993 on an application moved by the Union Government, the matter was not pursued and it was decided to withhold the announcement of 1993 national awards. Subsequently, in September 1993, the Government moved the Supreme Court for transfer of the cases pending before the Madhya Pradesh and Kerala High Courts to the apex court.

The court had on Jan. 11 stayed

proceedings in a petition by Bijan Ghosh and others before the Calcutta High Court, challenging the conferment of Bharat Ratna posthumously on Netaji Subhas Chandra Bose. The Union Government had taken the stand before the High Court that the Government had closed the matter by withdrawing the title.

It may be recalled that the nation's highest honour had been conferred on Netaji by the V. P. Singh Government, but it was immediately rejected by most members of his family.

The Union Government held that "keeping in view some of the public reactions and criticisms and to avoid unnecessary controversy, the Government decided notwithstanding the earlier announcement not to take any further action in the matter and to treat the matter as closed."

The court today issued notices in this regard.

Name of the Newspaper
Place of publication
Date of Publication

~~Tribune~~ *Hindu*
Chandigarh

18 JAN 1994

Civilian honours: S.C. stays proceedings in High Courts

From Our Legal Correspondent

NEW DELHI, Jan. 17.

The Supreme Court by its interim orders today stayed further proceedings in the petitions pending before the High Courts of Madhya Pradesh (Indore Bench) and Kerala on the issue of conferment of civilian honours like 'Bharat Ratna', 'Padma Vibhushan', 'Padma Bhushan' and 'Padma Sri'.

The Bench gave the orders while issuing notice to the respondents (petitioners before the High Courts of Madhya Pradesh and Kerala) on a petition from the Union of India seeking 'transfer' of these petitions to the Apex Court from the High Courts.

A main plea in the writ petitions before the High Courts was that the conferment of these 'honours' was violative of Article 18 of the Constitution.

The Chief Justice, Mr. M. N. Venkatachaliah, Mr. Justice S. Ratnavel Pandian and Mr. Justice S. Mohan were on the Bench.

The Bench also issued notice to the respondent (petitioner before the Calcutta High Court) on a Special Leave Petition (SLP) from the Union Government against the orders of the Calcutta High Court directing the Government to produce before the Court the records relating to closure of conferment of the award of 'Bharat Ratna' to Netaji Subhas Chandra Bose.

The Bench also stayed further proceedings in this matter pending before the Calcutta High Court.

The respondent in this matter (petitioner before the Calcutta High Court) challenged through a writ petition the decision of the Union Government (when National Front Government was in power at the Centre) to confer 'Bharat Ratna' posthumously on Netaji Subhas Chandra Bose.

During the course of the hearing of this writ petition, the Union Government submitted that it had closed the matter by withdrawing its earlier decision. Thereupon, the High Court directed the Government to produce the relevant records before the court in connection with the hearing of this writ petition.

Hence the present SLP before the Apex Court from the Union Government.

The Indore Bench of the Madhya Pradesh High Court which in its interim orders dated August 25, 1992 stayed the conferment of civil honours like 'Bharat Ratna' etc pending disposal of the writ petition before it, had later on January 20, 1993 vacated the orders of 'stay'. While vacating the 'stay' order, the Bench observed that the authorities concerned might consider the embarrassment that might be caused to the recipients of the 'honours' when there was a 'cloud' on the constitutional validity of 'conferment' of honours.

PRESS INFORMATION BUREAU
GOVERNMENT OF INDIA

Name of the Newspaper
Place of Publication
Date of Publication

~~State~~ *Pioneer*
New Delhi

SC stays writs against civilian honours

Legal Correspondent

New Delhi

THE SUPREME Court has taken upon itself the right to adjudicate cases relating to the conferment on Indian citizens of civilian honours, such as the Bharat Ratna, Padma Vibushan, Padma Bhushan and the Padma Shri.

In a brief order on Monday, a three-judge Bench comprising Chief Justice MN Venkatachaliah, Justice SR Pandian and Justice S Mohan, directed that further proceedings related to the matter, pending in the Kerala, Calcutta and Indore Bench of the Madhya Pradesh High Courts, would be stayed. They also issued notices on the petition filed by the Union Government, seeking the transfer of these cases from the High Courts to the Apex Court.

The important question raised in all the writ petitions before the High Courts, is whether awarding the civilian honours was violative of Article 18 of the Constitution, which states: "No title, not being a military or academic distinction, shall be conferred by the State".

The Union Government's petition also prays to the Apex Court to decide yet another substantial question as to whether the Calcutta High Court was right by law in making an order for the production of the unpublished official records relating to the affairs of the State, which contained communications by public officers in

official confidence.

Apparently, the Calcutta High Court had, in a writ petition filed by an advocate and a few others, directed the Central Government to produce all necessary documents pertaining to the announcement of the Bharat Ratna to Netaji Subhas Chandra Bose posthumously in January 1992 by the Narasimha Rao Government and thereafter, reversing its decision.

One of the grounds cited by the petitioners in the High Court, for challenging the declaration of the award, was that it amounted to a contravention of Article 18. They had also objected to the word 'posthumously' being used against Netaji.

In its submissions before the High Court, the Union Government had contended that the award had only been announced and not notified, since the stage of notification did not arise.

For, the Central Government stated, since the announcement had provoked adverse reactions, it had decided not to proceed further in the matter and closed it.

Even the Additional Solicitor-General, appearing on behalf of the Union Government, had prayed before the Calcutta High Court that the writ petition should be dismissed in view of the matter having been already closed by the Government.

However, on December 6, 1993, the High Court ordered the Central Government to produce all the relevant documents in this regard on January 19.

113

PRESS INFORMATION BUREAU
GOVERNMENT OF INDIA

Name of the newspaper
Place of publication
Date of publication

~~Indian~~ National Herald
New Delhi

SC stays HC proceedings on civilian awards

NEW DELHI, Jan 17 (UNI) —
The Supreme Court today stayed proceedings in writ petitions pending before the high courts in Kerala, Madhya Pradesh and West Bengal concerning the highest civilian awards of the Bharat Ratna, Padma Vibhushan and Padma Shree, clearing the decks for their conferment by the President.

The proceedings were stayed by a division bench comprising the Chief Justice, Mr M.N. Venkatachaliah, Mr Justice S.R. Pandian and Mr Justice S. Mohan when cases in this connection came up for preliminary hearing.

Mr Dijan Ghose and others had challenged before Calcutta High Court the decision of the V.P. Singh government to confer posthumously the award of Bharat Ratna on Netaji.

Name of the newspaper
Place of publication
Date of publication

115
~~Hindu~~ *Patel's*
New Delhi

Decks cleared for awards giving

United News of India

Decks were cleared on Monday for the conferment by the President of the Bharat Ratna, Padma Vibhushan and Padma Shree with the Supreme Court staying further proceedings in writ petitions pending before the High Courts of Kerala, Madhya Pradesh and Calcutta in relation to the awards.

The proceedings were stayed by a division bench consisting of Chief Justice M N Venkatchaliah, Mr Justice S R Pandian and Mr Justice S Mohan when cases in this connection came up for preliminary hearing.

As regards the writ petition pending before Calcutta High Court, the Union Government had challenged an order of the High Court directing it to produce the records relating to the closure of the decision to confer the award of Bharat Ratna on Netaji Subhash Chandra Bose posthumously.

Mr Dijan Ghose and others had challenged before Calcutta High Court the decision of the V P Singh government to confer posthumously the award of Bharat Ratna on Netaji. The Union Government had then informed the High Court that it had closed the matter in this regard. The High Court then directed the Union Government to produce the records relating to closure of the matter. Hence a special leave petition by the Union Government against the interim order of Calcutta High Court.

In the writ petitions pending before Kerala High Court and the Indore bench of Madhya Pradesh High Court, the petitioners had challenged the conferment of these titles as violative of Article 18 of the Constitution which prohibits conferment of such titles by the Union Government.

117

Calcutta
West Bengal
563

110



118
BY FAX

V.P. BHATIA,
UNDER SECRETARY(PUB. & VIG.),
FAX. NO. 011 3015750

D.O.No.1/27/91-Public

गृह मंत्रालय
भारत सरकार
नार्थ ब्लॉक, नई दिल्ली-११०००१
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI-110001

DATED: 18-1-1994.

Dear Shri Kundu,

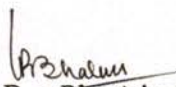
Reference my telephonic discussion with you this evening.

2. SLP was filed in the Supreme Court against Calcutta High Court's order dated 6.12.1993 in C.O. No.6720(W) of 1993. SLP was heard on 14.1.1994 by a Division Bench presided over by the Chief Justice of India. Supreme Court granted interim stay of Calcutta High Court's order dated 6.12.1993, and also ordered that the matter be listed on 17.1.1994 along with T.P.(C) Nos. 811-12 of 1993. Matter was accordingly heard again yesterday. Supreme Court was pleased to stay all further proceedings in the Calcutta High Court in the matter. Copy of the Supreme Court's order dated 14.1.1994 is enclosed. Copy of the Supreme Court's order passed yesterday (17.1.94) will be sent to you as soon^{as} it is available from the Court Master.

3. In view of the above mentioned developments, please appear along with Shri R.N. Das in High Court to-morrow and request Hon'ble Court to delete this matter from to-morrow's Cause List. Shri Das has already been informed of the position over the telephone. You may also inform him and show him this letter.

With regards,

Yours sincerely,


(V.P. Bhatia)

Shri S.K. Kundu,

Senior Government Advocate,
Ministry of Law & Justice,
Department of Legal Affairs,
4, K.S. Roy Road,
Branch Secretariat, Calcutta-700001.
FAX NO.033 2485215.

Law

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil/Cr) No. (s) 628/94

(From the judgment and order dated 6.12.93 of the High Court of
Calcutta in C.O. No. 6720(W) of 1993)

Union of India & Ors.

Petitioner (s)

Versus

Bijan Ghosh & Ors.
(With App. for stay)

Respondent (s)

Date: 14.1.94 This/these petition (s) was/were called on for hearing today.

CORAM: Hon'ble the Chief Justice

Hon'ble Mr. Justice S Mohan

Hon'ble Mr. Justice A S Anand

Hon'ble Mr. Justice

For the petitioner (s)

Mr. Altaf Ahmad, ASG,
Mr. Kailash Vasdev, Adv.
Mr. P. Parmeswaran, Adv.
Mr. C. Badri Nath Babu, Adv.

For the respondent (s)

UPON hearing counsel the Court made the following

ORDER

Upon motion the matter is taken on board.

Issue notice.

Interim stay of the impugned order.

List this matter on Monday along with
T.P.(C) Nos. 811-12 of 1993.

D.K.
(Dinesh Kumar)
Court Master

I L Dhingra
(I L Dhingra)
Court Master
15/1

120

120

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Date of notifying requester stamps.....
Date of delivery of request.....
Date when the copy was received.....
Date of delivery of the copy.....

18-1-94

18-1-94

Section Officer
Revenue Court of Ist.

[Signature]
18-7-94

(504)

253/94 Public
24.1.94

Ministry of Law & Justice
S. R. R. Road, Calcutta-700012

20.1.94



CC No. 672/141/33
S. R. R. Road
Calcutta-700012

Reference is made to your letter No. 1/27/91 dated 13.12.91 regarding the matter mentioned above. Please note that a copy of the letter was sent to the Hon'ble Minister for Law & Justice, Government of West Bengal, on 17.12.91.

It is requested that you may take the necessary steps to ensure that the matter is resolved as soon as possible. The Hon'ble Minister for Law & Justice, Government of West Bengal, has been informed of the matter.

I would request you to do the needful at an early date and to see that the matter is resolved without fail. I have been informed that the matter is being handled by the Hon'ble Minister for Law & Justice, Government of West Bengal, and the Hon'ble Minister for External Affairs, Government of India.

Yours faithfully,

(Signature)



Recd at 3.30h
lm
21/1/94

To me

ORIGINATOR

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510

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STAIR RD

7200 FINE/MA

RESULTS : D.K.



123
V.P. BHATIA,
UNDER SECRETARY(PUB. & VIG.),
FAX NO.011-3015750.

D.O.No.1/27/91-Public.

By FAX

गृह मंत्रालय
भारत सरकार
नार्थ ब्लॉक, नई दिल्ली-११०००१
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI-110001

Dated:21.1.1994.

Dear Shri Kundu,

Please refer to your Fax Message No.15/B/Home/93 dated 20th January,1994, regarding C.O. No.6720(W)/93 - Bijan Ghosh versus Union of India & Others in the High Court at Calcutta.

2. As per your message, the outcome of the hearing that took place on 19.1.1994 is that the Hon'ble Court was pleased to adjourn the matter till 24th January,1994 for production of the order dated 17th January,1994, passed by the Hon'ble Supreme Court of India on the SLP filed by the Union of India in connection with the above mentioned case. Accordingly, I am sending you a certified copy of the order dated 17th January,1994, passed on T.P.(C) 811-812/93 with SLP(C) No.628 of 1994 by a three Member Bench presided over by the Chief Justice of India.

3. It is requested that necessary follow up action by way of production of this order in the Hon'ble High Court, Calcutta, is taken on 24th January,1994. It will also be appreciated if Shri R.N. Das, Senior Panel Counsel is also informed about the contents of the order and the requirement of the production of this order in the Hon'ble High Court, Calcutta on 24th January,1994.

4. I shall be grateful if the action taken in the matter alongwith the order of the Hon'ble Court thereon is communicated to me at your earliest convenience.

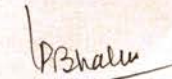
With regards,

Yours sincerely,


(V.P. Bhatia)

Shri S.K. Kundu,
Senior Government Advocate,
Branch Secretariat, Calcutta,
Ministry of Law, Justice & Co. Affairs,
Deptt. of Legal Affairs,
4, K.S. Roy Road,
Calcutta-700001.
FAX No.033-2485215.

Copy to Shri S. Guptoo, Senior Central Govt. Advocate, M/o Law & Justice, Deptt. of Legal Affairs, Branch Secretariat, 4, K.S. Road, Calcutta-1, for information.


(V.P. Bhatia)
Under Secretary to the Govt. of India

124
प्रधान मंत्री कार्यालय
PRIME MINISTER'S OFFICE

URGENT
123

नई दिल्ली - 110 011
NEW DELHI - 110 011

Sub : Constitutional validity of Bharat Ratna
and Padma Awards

As discussed on telephone by Shri N.K. Sinha,
Joint Secretary, PMO, a copy of the order passed by the
Supreme Court on 17th January, 1994 in the matter
mentioned above may kindly be sent to this Office
urgently.

(Signature)
(S.C. AGRAWAL)
Director

MHA (Shri M.V. Iyer, JS[A])

PMO U.O. No. 260/Pis/A/94 dated 20.1.1994

*Sent
(already
recd)
today*

US (R/ky) 21/1

*lmm
21/1*

To me

*458/JS(A)/94
21/1/94*

*256/94 Public
24/1/94*

189/94

125

(124)

IN THE SUPREME COURT OF INDIA

(Jurisdiction Under Article 139A of the Constitution of India)

TRANSFER PETITION No. _____ of 1994

IN THE MATTER OF :

Union of India, Rep. by the
Secretary, Ministry of Home Affairs,
New Delhi PETITIONER

VERSUS

1. Bijan Ghosh, Advocate
S/o Shri Benoy Krishna Ghosh
B-172, B.E. College,
Howrah-3.
2. Shri Amiya Nath Bose,
S/o Shri Sarat Bose
226/4A Netaji Subash Chandra Bose Road,
Calcutta-700 040.
3. Shri Sunil Krishna Gupta
S/o Late Shri Tripura
Krishna Gupta
38 Vidyasagar Street,
Calcutta-700 009.
4. Dr. Susanta Kumar Mitra
S/o Late Shri Nilmony Mitra
25-A Bag Bazar Street,
Calcutta-700 006.
5. Prof. Samar Guha
S/o Late Shri Binede
Kumar Guha
8/2 Central Park
Calcutta-700 032.

..... Respondents.

Filed
Subject to
Corrections,
D
2

8-2-94

contd...2

To

The Hon'ble Chief Justice of India
and His companion Justices of the
Hon'ble Supreme Court of India.

The humble petition of the
petitioner above named

MOST RESPECTFULLY SHEWETH :

- 1) That this is a petition under Article 139-A of the Constitution of India seeking transfer of the writ petition filed by the respondent^{No. 1} in the High court of Judicature at Calcutta being C.O.(W) No.6720/93.
- 2) That the respondent no.1 filed writ petition in the High court of Judicature at Calcutta questioning the intention of the Government of India to decorate late Shri Subhas~~Chandra~~ Bose with BHARAT RATNA as being opposed to Article 18 and also on other grounds. A true copy of the said writ petition is hereto annexed and filed as Annexure-I.
- 3) That the said writ petition was admitted and the matter is pending consideration before the High court of Judicature at Calcutta.
- 4) That subsequently, the petitioner herein

also filed Affidavit contesting the writ petition. A true copy of the said Affidavit is hereto annexed and marked as Annexure-II.

5) That on behalf of the petitioner, the Secretary to the Government of India in the ^{Ministry} ~~Department~~ of Home Affairs Shri ^{N.N.} ~~N.M.~~ Vohra filed an affidavit claiming privilege under Articles 123 and 124 of the Evidence Act read with Article 74(2) of the Constitution of India on 28th September, 1993 as the High court had directed the petitioners to produce the entire records pertaining to the declaration of the Award, of Bharat Ratna to ~~Hetero~~ Late Shri Subhas Chandra Bose.

6) That on 6-12-1993, the application ^{at the writ petition filed by respondent No.1} for amendment, was allowed subject to the objections that may be taken at the time of final hearing regarding the amendment wherein fresh prayers were made in the writ petition and the High Court had directed that counter-affidavit dealing with the all-egations made in the amended petition may be filed by ^{8.1.1994} 8/1/1994 and any reply to the counter-affidavit may be filed by 18-1-1994. The Court also directed that the matter may be listed on 19.1.1994.

128

127

7) That during the said hearing, it was brought to the notice of the High Court that the decision regarding the conferment of Bharat Ratna on Netaji Subhas^h Chandra Bose posthumously stands now closed and that the cause of action for the writ petition does not exist. That the Court, however, directed the learned Additional Solicitor General who appeared on behalf of the Government of India to produce ^{the} decision taken and as to how the same has been closed and it also directed that necessary files to be produced on 19.1.1994 subject to the claims already made by the respondents i.e. the petitioner herein.

8) That as against the said order dated 6th December, 1993 of the High court at Calcutta, the petitioner herein filed Special Leave Petition (Civil) No. 628 /94 on 11.1.1994

9. That this Hon'ble Court issued notices in the on 14-1-1994 and also ^{granted} interim stay ~~to the interim order of the High court.~~

Special Leave Petition

10. That the petitioner herein has also filed Transfer Petition nos. 3 ~~and~~ 11-12 of 1993 - Union

of India Vs. S.P. Anand and ^{Another} others. The said Transfer ^{seek} petitions seeking withdrawal of the original writ petition no. 2110(A) ^{of 1992} Balaji Raghavan Vs. Union of India, ^{is} (pending in the High court of Kerala at Ernakulam) and Misc. petition no. 1400 ^{of 1992} S.P. Anand Vs Union of India, ^{is} (pending in the High court of Madhya Pradesh at Jabalpur Bench at Indore ^{re}). The said writ petition also raised the question regarding the power of the Government of India to ^{grant} ~~ward~~ order of declaration like Bharat Ratna etc. in view of Article 18(1) of the Constitution of India.

11. That the said Special Leave Petition ^{no. 628 of 1994} was listed along with the transfer petition Nos. ~~8~~ and 811-12/93 on 17-1-1994.

12. That the Hon'ble court was informed that the petitioner is also filing the transfer petition in the instant matter so that there can be composite disposal of the question in all these transfer petitions.

13. That this Hon'ble court on 17-1-1994 granted stay of all further proceedings before the High court ^{at Calcutta} in CO No. 6720(W)/93. The ^{order} ~~order~~ ^{is} ~~is~~ annexed as Annexure III.

14. It is, therefore, submitted that it

will be in the interest of justice that CO No. 6720(W)/93 pending before the High court at Calcutta be transferred ^{and} withdrawn to this Hon'ble court so that it can be heard along with the transfer petitions ^{Nos. and} 8411-12/93.

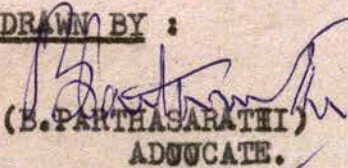
15. It is submitted that no prejudice will be caused to the respondents if the said CO No. 6720(W)/93 is transferred or withdrawn to this Hon'ble court for further ~~further~~ disposal by this Hon'ble court.

P R A Y E R

It is, therefore, prayed that this Hon'ble court may be pleased:

- a) to transfer/withdraw the CO No. 6720(W)/93 pending before the High court at Calcutta to this Hon'ble court.
- b) and pass such other order/orders as this Hon'ble court may deem fit and proper.

DRAWN BY :


(B. PARTHASARATHI)
ADVOCATE.

FILED BY

(ADVOCATE FOR THE PETITIONER)

131

IN THE SUPREME COURT OF INDIA
(Jurisdiction Under Article 139A of the Constitution
of India)

TRANSFER PETITION NO. _____ of 1994

IN THE MATTER OF :

Union of India, Rep. by the

Secretary, Ministry of Home Affairs,

New Delhi-PETITIONER

VERSUS

1. Bijan Ghosh, Advocate
S/o Shri Benoy Krishna Ghosh
B-172, B.E. College,
Howrah-3.
2. Shri Amiya Nath Bose,
S/o Shri Sarat Bose,
226/4A Netaji Subhas Chandra Bose Road,
Calcutta-700 040
3. Shri Sunil Krishna Gupta,
S/o Late Shri Tripura
Krishna Gupta,
38, Vidyasagar Street,
Calcutta-700 009.
4. Dr. Susanta Kumar Mitra,
S/o Late Shri Nilmony Mitra,
25-A Bag Bazar Street,
Calcutta-700 006.
5. Prof. Samar Guha,
S/o Late Shri Binode
Kumar Guha,
8/2, Central Park,
Calcutta-700 032

...RESPONDENTS

INDEX OF PAGES

SL.NO.	PARTICULARS OF DOCUMENTS	PAGES.
1.	List of Dates	
2.	Transfer Petition with Affidavit	1-7
3.	ANNEXURE-I Copy of writ petition CO No. 6720(W)/93 filed by respondent No. 1.	8-39
4.	ANNEXURE-II Copy of counter affidavit in reply to writ petition CO No. 6720(W)/93 filed by the petitioner.	40-48
5.	ANNEXURE-III Copy of Order dated 17.1.1994 of the Hon'ble Supreme Court granting stay of all further proceedings before the High Court at Calcutta in CO No. 6720(W)/93.	49-50

132

131 1

IN THE SUPREME COURT OF INDIA
(Jurisdiction Under Article 139A of the Constitution
of India)

TRANSFER PETITION NO. _____ of 1994

IN THE MATTER OF :

Union of India, Rep. by the
Secretary, Ministry of Home Affairs,
New Delhi-PETITIONER

VERSUS

1. Bijan Ghosh, Advocate
S/o Shri Benoy Krishna Ghosh
B-172, B.E. College,
Howrah-3.
 2. Shri Amiya Nath Bose,
S/o Shri Sarat Bose,
226/4A Netaji Subhas Chandra Bose Road,
Calcutta-700 040
 3. Shri Sunil Krishna Gupta,
S/o Late Shri Tripura
Krishna Gupta,
38, Vidyasagar Street,
Calcutta-700 009.
 4. Dr. Susanta Kumar Mitra,
S/o Late Shri Nilmony Mitra,
25-A Bag Bazar Street,
Calcutta-700 006.
 5. Prof. Samar Guha,
S/o Late Shri Binode
Kumar Guha,
8/2, Central Park,
Calcutta-700 032
- ...RESPONDENTS

To
The Hon'ble Chief Justice of India
and his Companion Justices of the
Hon'ble Supreme Court of India.

The humble petition of the
petitioner above named

MOST RESPECTFULLY SHEWETH :

1. That this is a petition under Article 139-A of the Constitution of India seeking transfer of the writ petition filed by the respondent No. 1 in the High Court of Judicature at Calcutta being C.O. No. 6720(W)/93.
2. That the respondent No. 1 filed writ petition in the High Court of Judicature at Calcutta questioning the intention of the Government of India to decorate late Shri Subhas Chandra Bose with BHARAT RATNA as being opposed to Article 18 and also on other grounds. A true copy of the said writ petition is hereto annexed and filed as Annexure-I.
3. That the said writ petition was admitted and the matter is pending consideration before the High Court of Judicature at Calcutta.
4. That subsequently, the petitioner herein also filed Affidavit contesting the writ petition. A true copy of the said Affidavit is hereto annexed and marked as Annexure-II.
5. That on behalf of the petitioner, the Secretary to the Government of India in the Ministry of Home Affairs Shri N.N. Vohra filed an affidavit claiming privilege under Articles 123 and 124 of the Evidence Act readwith Article 74(2) of the Constitution of India on 28th September, 1993 as the High Court had directed the petitioner to produce the entire records pertaining to the declaration of the Award of Bharat Ratna to late Shri Subhas Chandra Bose.
6. That on 6.12.1993, the application for amendment of the writ petition filed by respondent No. 1 was allowed subject to the objections that may be taken at the time of final hearing

regarding the amendment wherein fresh prayers were made in the writ petition and the High Court had directed that counter-affidavit dealing with the allegations made in the amended petition may be filed by 8.1.1994 and any reply to the counter-affidavit may be filed by 18.1.1994. The Court also directed that the matter may be listed on 19.1.1994.

7. That during the said hearing, it was brought to the notice of the High Court that the decision regarding the conferment of Bharat Ratna on Netaji Subhas Chandra Bose posthumously stands now closed and that the cause of action for the writ petition does not exist. That the Court, however, directed the learned Additional Solicitor General who appeared on behalf of the Government of India to produce the decision taken and as to how the same has been closed and it also directed that necessary files to be produced on 19.1.1994 subject to the claims already made by the respondents i.e. the petitioner herein.

8. That as against the said order dated 6th December, 1993 of the High Court at Calcutta, the petitioner herein filed Special Leave Petition(Civil) No. 628/94 on 11.1.1994.

9. That this Hon'ble Court issued notices in the Special Leave Petition on 14.1.1994 and also granted interim stay.

10. That the petitioner herein has also filed Transfer Petition nos. 811-12 of 1993 - Union of India Vs. S.P. Anand and Another. The said Transfer Petitions seek withdrawal of the original writ petition no. 2110(A) of 1992 - Balaji Raghavan Vs. Union of India (pending in the High Court of Kerala at Ernakulam) and Misc. petition no. 1400 of 1992 - S.P. Anand Vs. Union

of India (pending in the High Court of Madhya Pradesh at Jabalpur Bench at Indore). The said writ petition also raises the question regarding the power of the Government of India to order award of declaration like 'Bharat Ratna' etc. in view of Article 18(1) of the Constitution of India.

11. That the said Special Leave Petition No. 628 of 1994 was listed along with the transfer petition Nos. 811-12/93 on 17.1.1994.

12. That the Hon'ble court was informed that the petitioner is also filing the transfer petition in the instant matter so that there can be composite disposal of the question in all these transfer petitions.

13. That this Hon'ble court on 17.1.1994 granted stay of all further proceedings before the High Court at Calcutta in CO No. 6720(W)/93. The said order is hereto annexed as Annexure-III.

14. It is, therefore, submitted that it will be in the interest of justice that CO No. 6720(W)/93 pending before the High Court at Calcutta be transferred and withdrawn to this Hon'ble court so that it can be heard along with the transfer petition Nos. 811-12/93.

P R A Y E R

It is, therefore, prayed that this Hon'ble court may be pleased:

- a) to transfer/withdraw the CO No. 6720(W)/93 pending before the High Court at Calcutta to this Hon'ble court.
- b) and pass such other order/orders as this Hon'ble court

may deem fit and proper.

DRAWN BY :

FILED BY

(B. PARTHASARATHI)
ADVOCATE

(ADVOCATE FOR THE PETITIONER)

IN THE SUPREME COURT OF INDIA

(Jurisdiction Under Article 139A of the Constitution
of India)

TRANSFER PETITION NO. _____ of 1994

IN THE MATTER OF :

Union of India, Rep. by the

Secretary, Ministry of Home Affairs,

New Delhi -.-.-.-.-PETITIONER

VERSUS

1. Bijan Ghosh, Advocate
S/o Shri Benoy Krishna Ghosh
B-172, B.E. College,
Howrah-3.
 2. Shri Amiya Nath Bose,
S/o Shri Sarat Bose,
226/4A Netaji Subhas Chandra Bose Road,
Calcutta-700 040
 3. Shri Sunil Krishna Gupta,
S/o Late Shri Tripura
Krishna Gupta,
38, Vidyasagar Street,
Calcutta-700 009.
 4. Dr. Susanta Kumar Mitra,
S/o Late Shri Nilmony Mitra,
25-A Bag Bazar Street,
Calcutta-700 006.
 5. Prof. Samar Guha,
S/o Late Shri Binode
Kumar Guha,
8/2, Central Park,
Calcutta-700 032
- ...RESPONDENTS

A F F I D A V I T

I, V.P. Bhatia, Under Secretary, Ministry of Home Affairs,
North Block, New Delhi- 110 001, do hereby solemnly affirm
and declare as under:-

That I have gone through the accompanying Transfer
Petition and with reference thereto say that what is stated
therein is true and correct on the basis of information derived
from the record of the case.

That the petitioner herein has not filed any other petition.

That the Annexures are true and correct copies of their respective originals.

VERIFIED AT NEW DELHI:

Dated this the

DEPONENT

139 72146/15/63/ Home/93

District : Calcutta.

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

C.O./C.R. No.

(W) of 1992 ;

Subject matter relating to :

Under Group - IX Head -
Classification List.

In the matter of :

Bijan Ghosh

...Petitioner

-Vs-

The Union of India

...Respondent

Advocate-on-Record :

Mr. Bijan Ghosh
High Court, Calcutta
Bar Association, Room No.11.

120
3
3d of Bijan Chosh.
Advocate.
in person.

District : Calcutta

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

In the matter of :

An application under Article 226
of the Constitution of India ;

And

In the matter of :

A Writ in the nature of Mandamus ;

And

In the matter of :

A Writ in the nature of Certiorary ;

And

In the matter of :

Any other writ and/or writs, order
and/or orders, direction and/or
directions ;

And

In the matter of :

The highest Civilian Award

'Bharat Ratna' conferred upon

Subhas Chandra Bose posthumously

without having ^{any} official declaration
by ^{Union} Government of India ^{of his death} and/or

admission of His death ;

And

Contd...2

- 2 -

In the matter of :

A direction upon the Union of India
to declare post-facto the death of
Subhas Chandra Bose ;

And

In the matter of :

'Right to Know' is an extension of
Fundamental Rights ;

And

In the matter of :

Bijan Ghosh, Advocate
practising at High Court at Calcutta
Son of Sri Benoy Krishna Ghosh
B-172, B.E.College, Howrah-3.

...Petitioner

-Versus -

The Union of India
represented through the Chief Secretary
President of India,
Rastrapati Bhavan,
New Delhi-1.

...Respondent

To

The Hon'ble A.M. Bhattacharjee, Acting Chief Justice
And His Companion Justices of the said Hon'ble Court.

The humble petition of the
petitioner abovenamed ;

- 3 -

Most Respectfully Sheweth : -

1. Your petitioner is ^a Citizen of India and resides permanently in the address given in the cause title. He is an Advocate, practising at High Court at Calcutta.
2. The death of Subhas Chandra Bose, the main architect of the Freedom of India, is still a 'unsolved mistry'. It was allegedly reported that Subhas Chandra Bose died at a plane crash on 18th August, 1945 at Taihaku, now called Taipei in Taiwan but the Nation reasonably believes that the actual death of Subhas Chandra Bose was not caused in the reported plane crash. As a result of that different enquiry commissions were held to prove the Death but Findings/ conclusions of them had not been at all accepted by the Government of India as well as the Citizens of India.
Awarding a person 'Posthumously' concludes that the person is dead. The Nation have every right to know about the actual Death of the National Hero, the cause(s) of the death, if He is really dead by now. As such this application is made in the National Interest and this application be treated as a Public Interest Litigation.
3. His Excellency, the President of India, had the pleasure to ^{confer} award 'Bharat Ratna' ^{upon} to Subhas Chandra Bose

Contd...4

- 4 -

on 26th January 1992 posthumously, which concludes that the Government of India is hereby officially ^{ad}submitting that Subhas Chandra Bose is dead. At the same time by awarding him Bharat Ratna, the Highest Civilian honour posthumously, the President of India has declared the other way round, that he is dead. The Government of India before that had not declared anywhere that Subhas Chandra Bose is dead and had not officially accepted the alleged report of Subhas Chandra Bose's death on air crash on 18th August, 1945, in Taiwan or findings of any commission. There is neither any declaration from any International Government or Authority either that Subhas Chandra Bose died on that air crash nor in any other specific event. Without the specific report of death of Subhas Chandra Bose, the Government of India cannot and should not award him the highest civilian honour posthumously.

4. To unveil the mystery of death of Subhas Chandra Bose, Shah Nawaz Committee was appointed by the Government of India to assert the facts related to the plane crash and/or death of Subhas Chandra Bose in the year 1956 i.e. after a period of eleven years from the alleged air crash followed by the announcement by Tokyo Radio. The Government of India, headed by Indira Gandhi had not accepted the report of the Shah Nawaz Committee while setting up the 2nd enquiry commission, a one-man ~~Justice Khosla~~ Judicial Commission consisting of Mr. Justice Khosla, a retired

- 5 -

Chief Justice of Panjab High Court called as Khosla Commission. The Khosla Commission's report which was submitted in June, 1974 with the findings in favour of alleged air Crash, had also been rejected by the Government of India headed by Morarji Desai. The then Prime Minister, Morarji Desai, in the Lok Sabha on September 3, 1978 declared that with some contemporary records which had been available, in the light of doubts and contradiction and with those records the Government find it difficult to accept the earlier findings and conclusions of the Shah Nawaz Committee and that of the Khosla Commission and this declaration of Morarji Desai decisively proves beyond all doubts that the death of Subhas Chandra Bose was not officially accepted and recorded by the Government of India and perhaps for that reasons, the Bharat Ratna could not be awarded posthumously to him before. Hence the question of declaring and/or considering a person dead, if he/she is unheard of 7 years, cannot be arised here. Further to that the Government of India, headed by then Prime Minister, Mr. Chandra Shaker, ordered for a 3rd Enquiry Commission to unearth the 'unsolved mistry' of Subhas Chandra Bose's death, but the official order has not yet been carried out for some administrative reasons.

5. Subhas Chandra Bose was conferred the title 'Netaji'. Gandhiji said about him " Subhas is the

- 6 -

patriot of Patriots, the prince of Patriots". The people of India have profound regard in Him. He all along had been admitted as a National Hero. He was the main architect of the freedom of India. The Countrymen have become stupified as to what propelled the Government of India to confer the award to him. Award is a recognition conferred to a person for his achievement, contribution and success in any field. An award makes a man glorified, levels a mark of recognition on him and as such every award has it's congenital limitation. But when a personality is higher and greater than any award, conferring the award to that person becomes ridiculous. It becomes an act of carelessness to limit that person ranking with others who had already been awarded and who would be awarded in future. Sometimes conferring award to a person becomes an insult to him, instead of an honour to him. That is why we also find that some persons under some unwanted situation or in some derogatory circumstances reject such honour or do not receive such award. Award is made to account and recognise the success/contribution/achievement of a man. Has the Government of India now able to measure and success the His contributions to the freedom struggle of India and was his success subject to recognition by the Government of India ^{that too officially.} Conferring the award Bharat Ratna cannot be a 'prize-giving ceremony'. Reward of the patriot was the freedom of His mother land, it cannot be a functional honour.

Contd...7

- 7 -

6. An Award, whatever may ^{be} the honour status of that, may not always be a reward to a personality. It could ridicule and rebuke him, it may degenerate, debase and defame him.

It may be derogatory to the person who is awarded if he is much more greater than the award itself. A personality like him should not be ranked with other recipients of Bharat Ratna by conferring ^{him} the award, may it be the highest civilian award, Not necessarily an award would always make the recipient glorified, sometimes it just damage the purpose itself when it turns to a humiliation on the part of the recipient.

7. After a span of about 45 years what promoted the Government of India to recognise His success, to fathom his achievements, to reward His contribution to admire His sacrifice. The decision and act of Government of India are really ridiculous and have got no rational basis. Virtually he has been punished by this award. It is not a regard but a sheer disregard to him. The persons, who had been conferred with Bharat Ratna before Him are ~~chronologically~~ chronologically Radha Krishnan, C. Rajagopalachary, Dr. C.V. Raman, Dr. Bhagaban Das, H. Bisheshwarayya, Jواهرलाल Nehru, Gobindallav Pant, D.K.Karve, Bidhan Chandra Roy, Purushottam

- 8 -

Das Tandon, Dr. Rajendra Prashad, Dr. Rajendra Froshad, Dr. Jakir Hushen, P. V. Kane, Lalbahadur Shastri, Indira Gandhi, V. V. Giri, ^{K.Kamraj} Kx/Kx Mother Teresa, Binoba Bhave, Khan Abdul Gaffor Khan, M.G. Ramchandran, B.R. Ambedkar, Nelson Mandela, Morarji Desai, Rajiv Gandhi, Dattav Dhai Patel respectively. It cannot be said that all of them were superior to Him or His contributions were less worthy than anybody's amongst the foregoing names. It is also a question to the people that what makes awarding Him Bharat Ratna along with H.A.K. Azad on the same day. They were not at all equal in rank as far the freedom movement of India was concerned. After Him, till date, J.R.D. Tata and Satyajit Ray have been conferred Bharat Ratna. Should the Government of India rank Subhas Chandra Bose with all these persons or with all such persons who would be awarded Bharat Ratna in future.

8. There was a total nonapplication of mind on the part of the Government of India in conferring Him Bharat Ratna. It was totally an mechanical approach in awarding Him. The Government of India should have meticulously considered whether it would be a regard or disregard in awarding Him Bharat Ratna after 45 years of Independence and that too after awarding the same to a lot of persons. Had he been the first recipient of this award, still it

Contd...9

- 9 -

would ^{been} be the public reaction that awarding Him ^{was} is an attempt to limit Him, His success, contribution and attainments. The Government of India should have judge the matter carefully, not mechanically and superficially; the public sentiments, emotions and feelings should have been taken into account before conferring Him any award. Without having any attempt afresh to know about the mistry of His Death, without having any regard to the honour the people have for Subhas Chandra Bose, the Government of India awarded Him and that too posthumously and the award which had been conferred by this time to a number of persons, who cannot be ranked with him by any way. The Government of India has no right and authority to insult a National Hero; to defame and disregard a man who was the main architect of the freedom of India, to hurt the feelings, sentiments and ~~admint~~ admiration of the people of India, to dishonour and humiliate a personality by just attaching a mark of award whereas the award is meant for other persons who needs statutory recognition and honour. The Government of India should reconsider the decision of conferring Him Bharat Ratna and there is no lota of doubt about it that it would be a mark of true respect and honour to Him if He is not leveled with any award. The declaration of conferring Bharat Ratna to Him should be withdrawn^e/recalled as a mark of true respect and honour to Him.

- 10 -

Your petitioner craves leave to submit the account of public sentiment and feelings as reported in press against Government's this decision of Government.

Further to that there was no disclosure of the material facts on the basis whereof the Government of India has chosen to describe the award as posthumous. For some obvious reasons the reports and findings of Shah Nawaz Committee and Khosla Commission were declared not decisive. An important dignitary in his speech on the occasion of installation of Subhas Chandra Bose's portrait in the Central hall of the parliament in sometime 1977 contained on indications about the uncertainty of his having died in the meantime, rather wishing his home-coming even for a day.

9. Subhas Chandra Bose left his house at Calcutta on 17.1.1941, evading house arrest, reached Japan in May 1943, en-route Afghanistan, Soviet Russia, Germany, Madagascar and Sumatra.

10. Japan officially surrendered on 15th August 1945. After the fall of Japan in August, 1945, since it was not safe for him to stay in any part of East Asia, he left for an asylum, in all probability that was the then Soviet Russia,

it is not just a sentimental belief or mere conjecture but there are enough circumstantial evidence, documentary reports and other auxiliary testimonials to accept this conclusion. It is believed that Subhas Chandra Bose successfully managed to enter the then Soviet Russian territory via Manturia under the camouflage of the report of his air crash death on 18th August 1945.

11. It is reasonably believed that Subhas Chandra Bose went to the then Soviet Russia and wanted to come back to India sometime in 1945-46, but subsequently, somehow it was managed at any level and he was kept in the then Soviet Russia against his will and for some reasons or others, he was not allowed to come to India. Propelled by this strong impression all the persons who took the matter of Subhas Chandra Bose's death mystery in the National interest, all along wrote the authorities concerned of the then Soviet Russia even to the new born Russia to reveal all the facts and truths related to death mystery of Subhas Chandra Bose. But till date, no such information has been received by the people of India. It is needless to mention that Subhas Chandra Bose was never declared a War Criminal.

12. It was along doubted that the alleged plane crash was a camouflage of the report under which

Subhas Chandra Bose left East Asia and took shelter in any part of the world and the logical conclusion ^{was} is the then Soviet Russia, which all along was very friendly to Subhas Chandra Bose and he had a profound faith in the Philosophy of Socialism. All along, different Indians, in representative capacity as well as in individual capacity wrote to the then Soviet Russian authorities that Subhas Chandra Bose was in the then Soviet Russia and should be handed over to the Indian Government. Mr. Samir Guha, an M.P., as a leader of the Socialist Party of the Lok Sabha met Brezhnev at Rastropati Bhavan when the latter visited India and presented a three-page memorandum on 23.11.1973 with a request that Moscow should reveal all the facts about Him. In which it was outlined the reasons categorically why Indian believe that Subhas Chandra Bose was given shelter by Stalin after escaped from Saibheria on 23.8.45. But no reply was received either from Delhi or from Moscow, neither the request was turned down in writing. The same request was made to Mr. Gorbachev after he came to power which too ^e went un-answered.

13. Freedom and Democracy are the two things which are complimentary to each other and one can not exist without the other. Freedom is all pervading. It includes the freedom of information. In a Democratic country like

India, where freedom of thought and expression are guaranteed as fundamental rights, which concludes well that freedom of information is also within the meaning of fundamental rights because the resource of ~~thinking~~ *thought* and expression are information and knowledge. A free and democratic State cannot afford to ignore the freedom of information to Her citizens, specially which is a question of National Interest, more preciously relating to the death of a National Hero, the main architect of the freedom of India. Freedom, in its' true spirit is guaranteed in the Constitution as Fundamental Right and as such 'Freedom of Information' should also be honoured as Fundamental Right. The promises of unconditional Freedom in true sense are piling up but the day of fulfilment is no where in sight.

14. It would be social injustice if the people are deprived of 'Right to know'. It cannot be said that social justice has been done if there is no right to know, no freedom of information, especially which is a province of National Importance, *and in no way related with the defence & security affairs of the State*

15. The right to know should be treated with paramount importance and of fundamental hearing in a Democratic Republic. Right to know is as fundamental as Right to life.

- 14 -

The constitution of India had been contemplated in its preamble.

Justice-social, economical and political. The Justice cannot be ensured without proper freedom of information and right to know. Every citizen has every right to know everything save and except the exclusive defence matters which is the ~~prerogative~~ province of security of State. Furnishing information with regard to 'right to know' is required for the due discharge of the duties on the part of the Government even if it is required to obtain from any part of the world. A democratic Republic State cannot promote a typical kind of 'mental-slavery' to her people by adopting the practice of furnishing edited information. If there is no subject in free India, if there is no master slave relation between the Government and people in a Republic State, then the people have every right to know. In a Republic, by definition a Government is made by the people, of the people, for the people and as such if the people are not guaranteed of their right to know then by the definition itself the Government does not remain Democratic Republic.

16. The Government of India in Janata Fronts Ministry admitted that right to know the truth is with the perview of fundamental right but that remains ^emore a theoretical declaration.

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- 15 -

17. A man of Subhas Chandra Bose's stature and importance, glamour and glory, struggle and success should not be declared dead in the camouflage of awarding posthumously. Virtually Government is thus striving to conclude all further enquiry commission(s) which could unearth the truth related to his death or his unwilling detention in any country where he took political ^{an} asylum.

18. The Government of India did not care to honour the freedom of information to her citizens. British Government published the documents related to 'Transfer-of-power 1942-47' in 1975 revealing many a documents relating to freedom struggle of India but the Government of India remained idle and indifferent about the documents, deeds published in the said 'Transfer-of-power'. India should have ^{been} asked British Government about clarification and relation of some documents, records and remarks and for unearthing more facts and the truths related to the freedom struggle of India and her political personalities for a review afresh.

India attained 'freedom' by way of Transfer-of-Power. The Government of Britain Transferred the Power to Government of India, conditionally, inter alia, that the all Documents of 'Transfer-of-Power' would ^{not be} released not before 1999, i.e. after 50 years from the enactment of

- 16 -

the Constitutional Law of India. In a civilised world, for an independent country this is unthinkable and unheard of.

Even after the breaking of the Soviet Russia, the Government of India did not take any attempt to know about the 'unsolved mistry' which is haunting the country for about half a century, whereas all the time all the doubts were hurbered about Subhas Chandra Bose's stay at the then Soviet Russia. The State archives of the then Soviet Russia's intelligence service, commonly known as K.G.B., which was also very much right and resourceful on ~~international~~ International secrete information, is now accessible to all but the Government of India did ^{not} take any attempt to investigate, search out information over where about India's freedom struggled or her men, specially of Subhas Chandra Bose.

In a question of National Importance, the State can not ignore her responsibility by deliberately turning her fact back to the mines of information.

19. That no application is pending before this Hon'ble Court or any other Court for the same self cause of action.

20. Being aggrieved by and dissatisfied with the mechanical decision and total non-application of mind on the part of Government of India with regard to conferring Bharat Ratna to Subhas Chandra Bose and that too posthumously without having any official declaration of the death of Subhas Chandra Bose, your petitioner begs to move this application under the Constitutional Writ Jurisdiction amongst the other followings :

GROUND S

- I. For that the Government of India has never admitted and declared that Subhas Chandra Bose is dead and without having such official declaration and/or admission, the Government of India can not award him posthumously.
- II. For that the mechanical approach and non-application of mind on the part of Government of India, have prejudiced the profound feelings and admiration of the people throughout the country for Subhas Chandra Bose and Government of India should withdraw/recall the award conferred to them as a mark of true-honour to Him.

- 18 -

- III. For that the Government of India should not have rank Him with others recipients of Bharat Ratna, should not have limit Him by awarding Him Bharat Ratna, may it be the highest civilian award.
- IV. For that the Government of India should not have awarded Him Bharat Ratna, as His achievements were much more glorious and magnificent than any award.
- V. For that a statutory and functional recognition by way of conferring Him an award has virtually dishonoured Him and as such the Government of India should re-consider the matter de-novo and till such afresh decision the award should not be handed over to anybody on His behalf.
- VI. For that His contribution and sacrifice, success and achievements, struggle and patriotism could not be matched with or ranked by any award, may it be the highest civilian honour, Bharat Ratna.
- VII. For that before conferring Him the award the Government of India ought to have consider these aspects whether the award itself would reward or ridicule Him, would honour or dishonour and defame Him, would aprisiate or deprisiate Him since every award has it's congenial limitations and as such award is not meant for every body.

Contd...19

- 19 -

- VIII. For that Bharat Ratna is the highest civilian award given from the office of President and Subhas Chandra Bose was the main architect of the Freedom of India and as such, such an erroneous and unconstitutional functioning on the part of the Government of India cannot be appreciated.
- IX. For that the Government of India should have declared first that Subhas Chandra Bose is dead, the declaration being substantiated by documents and evidences beyond doubts, before awarding him posthumously.
- X. For that the Government cannot take the plea that he is dead in the eye of law as he is unheard of more than 7 years from the date of his alleged report of death, i.e. from 18th August, 1945, since the Government of India did not admit even in 1978 that Subhas Chandra Bose is dead and subsequently ordered for another enquiry commission.
- XI. For that without having any endeavour to get the true and real facts about the death of Subhas Chandra Bose after the changed International political circumstances which has become conducive

Contd...20

- 20 -

to reveal the facts, the Government of India should not declare him dead by awarding him just posthumously.

- XII. For that by conferring the award, Bharat Ratna, posthumously to Subhas Chandra Bose is otherwise illegal official declaration of death of Subhas Chandra Bose, which is not at all permissible under the law.
- XIII. For that the Government of India took the camouflage of awarding Subhas Chandra Bose posthumously to put an end to the Enquiry(s) which is yet to be concluded satisfactorily to unvail the truth relating to the alleged report of death of Subhas Chandra Bose.
- XIV. For that conferring the award, Bharat Ratna, posthumously to Subhas Chandra Bose is an unprecedented case of conviction without trial and as such the said award should be withheld unless and untill His death is conclusively proved and officially declared.
- XV. For that the Government of India has never admitted the death of Subhas Chandra Bose after the reports

- 21 -

of Shah Nawaz Committee and Khosla Commission and the Government of India headed by Chandra-
sekhar ordered for another enquiry commission to
be concluded on the unsolved mistry of death of
Subhas Chandra Bose and without having the
conclusive report of the said 3rd commission, thus
ordered, the Government of India cannot declare a
person 'dead' by awarding him posthumously.

XVI. For that citizen of India had the freedom of
information and the Government of India cannot
afford to neglect the responsibilities and liabili-
ties of furnishing the information, specially which
is involved in the National Importance.

XVII. For that the Government of India cannot sit idle
in not investigating the 'unsolved mistry' relating
to the death of Subhas Chandra Bose whereas he was
the main architect of the Freedom of India.

XVIII. For that this application is made in the National
Interest and keeping pace with the National feelings
and sentiments which all Indians still retain about
Subhas Chandra Bose.

Contd...22

- 22 -

- XIX. For that before declaring him officially dead in the camouflage of awarding him posthumously, the Government of India should strive to find out in every quarter of the World whether Subhas Chandra Bose is dead or not, if dead, when he died, how he died, where he died and what happened to the dead body.
- XX. For that the Government of India cannot declare a person dead without being satisfied substantially, evidentially and documentarily about the death and cannot declare a person dead by way of awarding him posthumously and as such, the award should be withheld until and unless the death is officially declared by the Government of India.
- XXI. For that the Government of India ^{owe} ~~owr~~ an explanation and obligation to Her people, being a Republic Country, to speak out the truth on the basis of record and evidence and the same can not be circumvented by making a posthumous award.
- XXII. For that it is reasonably believed that Subhas Chandra Bose left for the then Soviet Union under the camouflage of the report of the plane crash and

Contd...23

- 23 -

spent the rest of his life over there, may be against his pleasure and the Government of India awarded him posthumously on January 26, 1992 without having any enquiry officially in the political State Intelligence Archives of the then Soviet Union which is now easy accessible to all after the breaking of Soviet Union in December 25, 1991.

XXIII. For that before declaring Him dead the Government of India should order for a commission to be constituted by a highly technically efficient men for fishing out with all sincerity the information from all possible corners of the Globe which is also very easy available now in the charged International Political situation.

XXIV. For that since the award has been once conferred to Him posthumously, the Government of India can not afford to shrink in discharging it's responsibilities and can not evade it's obligations to find out and establish the truth beyond all doubts about the said 'mistry' even if, the award Bharat Ratna is subsequently withdrawn as a mark of true respect to Subhas Chandra Bose.

Contd...24

- 24 -

21. Your petitioner submits that since the people of India have not admitted and accepted the conferring of Bharat Ratna to Subhas Chandra Bose as a mark of Honour and Recognition to Him, and as such through out the country, irrespective of political faith and belief, the people have criticised this decision and declaration of Government of India and demanded withdrawal and/or cancellation of this award conferred the Him. The question of conferring Bharat Ratna to Subhas Chandra Bose was raised in the floor of W.B. Legislative Assembly and the entire Assembly, without any reservation, conveyed the request to the President of India, who was then in Calcutta, to cancel the Award. A citizen's convention was held on 22nd February, 1992, at Calcutta University contenary Hall to demand immediate withdrawal of the said posthumous award. Neither from His family nor anybody from Government of West Bengal went to receive the award on His behalf on 28th March, 1992 at Rastropati Bhavan, on the occassion of Bharat Ratna award giving carimony or thereafter. The Authority has decided to handover the award to His family on his behalf on the second occassion, held on 6th April, 1992, at Rastropati Bhavan finding no other alternative to such situation. But none accepted the award on His behalf. The authority concerned must re-consider the decision of conferring Him Bharat Ratna and to withdraw the same as a special case.

Contd...25

- 25 -

22. Your petitioner further submits that the fundamental responsibility of Government of India to make a full and faithful disclosure of all the facts and records. The word secret, specially in political arena, is a relative factor. Nothing could be secret for infinite time span. The Secret Files/Documents of Government of India of 1950 is no more of that ~~was~~ secrecy as on today. With the passing of time the necessity of secrecy is forfeited in itself. If any thing is kept secret perpetually, then it becomes conclusive that the matter is made secret purposively. Award or no award, even the search of a missing citizen must come to an end at some state of conclusiveness. There is no doubt that it would be much honour if His countrymen could know the truth and fact about His mysterious disappearance and suspected detention in some foreign country against His will, than to treat the award as posthumous either by presumption or by suppression of facts. It is not known whether there exists an actual mystery or a mystery has been created to hold back the truth from the Indian people. The opinion sustains in public mind in this respect that the most evasive and mysterious stands had been resorted by the Government of India, at least till 1991. It is of no use making any enquiry in a mysterious way to solve a mystery. This not an inexplicable mystery, but the Government of India alone had been striving to make it inexplicable.

Contd...26

- 26 -

23. Although quite in the day the quest for the truth has arisen once again in the context of the announcement about the posthumous award and let us only hope that the quest itself does not turn out to be posthumous or abortive. People have to be told in precise terms and with fullest details if the expression "posthumously" has any legitimate foundation.

24. No demand of justice has been served upon the respondent, since that would be mere ornamental in maintaining the procedure.

25. Your petitioner submits that no other speedy and effective forum is available to him and there will be a total redressal of the Nation wide public grievances and complete justice to a National question.

26. This petition is made bonafide and for the ends of Justice.

Under the aforesaid facts and circumstances, Your petitioner most respectfully prays that Your Lordships may graciously be please to issue ;

- 27 -

a) A writ in the nature of Mandamus calling upon the respondent authorities to cancel and/or withdraw and/or recall the award, viz. Bharat Ratna which has been conferred on Subhas Chandra Bose on 26th January, 1992, which has not yet been handedover to anybody on behalf of him as a mark of true and fair respect and honour to a man who is beyond any functional award.

b) A writ in the nature of Mandamus calling upon the respondent authorities to declare officially that Subhas Chandra Bose is dead, since the Government has awarded him posthumously.

c) A writ in the nature of Mandamus calling upon the respondent authorities to declare the details of Death of Subhas Chandra Bose i.e. when the death occurred, how the death occurred, where the death occurred and what happened to the dead body.

- 28 -

d) A writ in the nature of Mandamus calling upon the respondent authorities to form and constitute a 'High-Level Enquiry Committee' to unearth the truth and facts beyond all doubts related with the unsolved mystery of the death of Subhas Chandra Bose.

e) A writ in the nature of Certiorari calling upon the respondent authorities to produce all the records available to them related to the death of Subhas Chandra Bose, in original, so that consignable justice may be administered.

f) Rule NISI in terms of prayers (a) to (e) ;

g) Any other appropriate writ and/or writs as Your Lordships may deem fit and proper.

h) An adinterim order of injunction restraining the respondent authority from handing over the award to anybody

- 29 -

on His behalf and/or placing the
award in National Museum or in
some other place.

1) Any other appropriate order
and/or orders, direction and/or
directions as Your Lordships may
deem fit and proper.

And your petitioner, as in duty bound, shall ever pray.

Sd/- Bijan Ghosh.
Advocate
in person,
18/1/93

AFFIDAVIT

I, Sri Bijan Ghosh, son of Sri Benoy Krishna Ghosh, aged about 37 years, by Caste Hindu, by occupation Advocate, practising at High Court, Calcutta, residing at B-172, B.E. College, Howrah-3, do hereby solemnly say as follows : -

1. That I am the writ petitioner and I am well acquainted with the facts and circumstances of the case.
2. That the statements made in paragraph Nos. 1 to 6, 8, 13, 14, 15, 17, 24, 26 are true to my knowledge and those made in paragraphs No. 7, 9, 10, 11, 12, 16, 18 excepting last paragraph are derived from records and newspapers and rest are my humble submission before this Hon'ble Court.

Prepared in my office.

Esq Bijan Ghosh
in person.
(Advocate)

Esq Bijan Ghosh
in person
Deponent (Advocate)

Solemnly affirmed before me
this the 18th day of January,
1993.

Commissioner.

120
District : Calcutta

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)
—

In the matter of :

An application under Article 226 of
the Constitution of India ;

And

In the matter of :

Bijen Ghosh

...Petitioner

-Vs-

The Union of India

...Respondent

P E T I T I O N

Mr. Bijen Ghosh
Advocate
High Court, Calcutta
Bar Association, Room No. 11.
—

DISTRICT CALCUTTA

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction

Appellate Side

C.O./C.R./NO.6720 (W) OF 1993

In the matter of:

an application under Article 226 of
the Constitution of India

AND

In the matter of :

Bijan Ghosh .. Petitioner

-Versus-

Union of India & Others .. Respondents

Affidavit-in-opposition to the writ petition for and on
behalf of respondent no.1.

I, V.P. Bhatia, son of late Shri M.L. Bhatia aged
about 50 years, by occupation, service, working for gain
at New Delhi in the Ministry of Home Affairs do hereby
solemnly affirm and say as follows:-

1. I am Under Secretary in the Ministry of Home
Affairs, Government of India and am duly authorised and
competent to affirm this affidavit for and on behalf of the
respondent no.1 herein.
2. I have read a copy of the writ petition and under-
stood the purport and contents thereof.
3. Save and except the statements expressly admitted
hereinafter and save and except what appears from the records

all allegations contrary thereto and/or inconsistent therewith shall be deemed to have been denied and disputed by me.

4. Before dealing with the statements or allegations contained in the writ petition, I beg to state the following:-

- a) The Government of India accepted the findings of both the Netaji Inquiry Committee and the Khosla Commission to the effect that Netaji died in an air crash at T ihoku on 18th August, 1945;
- b) The Report of the Khosla Commission along with the Memorandum of Action Taken thereon was laid on the Table of both the Houses of Parliament on 3rd September 1974;
- c) The statement made by Shri Morarji Desai the then Prime Minister in the Lok Sabha on 28th August, 1978 did not amount to outright rejection of the conclusions arrived at by the Netaji Inquiry Committee and the Khosla Commission. Shri Desai had stated that reasonable doubts had been cast on the correctness of the conclusions reached earlier. Also some contradictions in the testimony of witnesses had been noticed and some further

....p/3

contemporary official documentary records had also become available in the light of all of which it would be difficult to accept the earlier conclusion as decisive. However, Shri Morarji Desai had also added that no useful purpose would be served by having any further inquiry;

- d) It does not appear from the records in the Ministry that any alleged third Inquiry Commission was ordered by Shri Chandra Sekhar, the then Prime Minister;
- e) On 7th August, 1991, in connection with a Special Mention by Shri Pramod Mahajan, M.P. Rajya Sabha, members present had urged the Government to confer Bharat Ratna posthumously on Maulana Abul Kalam Azad and Shri Subhash Chandra Bose. Keeping in view the sentiments of these Hon'ble Members and in recognition of their public service of the highest order, the names of Maulana Abul Kalam Azad and Neta were approved by the President of India for the award of Bharat Ratna and the same were announced on 23rd January, 1992 ;
- f) The award of Bharat Ratna is conferred for exceptional service towards the advancement of Art, Literature and Science and in recognition of public service of the highest order. The decision to confer Bharat Ratna posthumously

on Netaji Subhash Chandra Bose was taken keeping in view his relentless struggle and contribution for the cause of India's freedom. It is further denied that this decision was taken without any application of mind ;

(g) However, keeping in view the widespread public reaction and sentiments of the people and to avoid any unnecessary controversy, the Government decided, notwithstanding the earlier announcement not to take any further action in the matter and to treat the matter as closed ;

(h) The writ Petition is not maintainable in as much as no legal right of the petitioner is affected. The decision to confer honour or an award is purely administrative decision of the Government ;

5. Fully relying on the above, I now beg to deal with the statements or allegations contained in the writ petition.

6. With regard to paragraphs 1,2,3 and 4 of the petition, save as aforesaid and save what appears from the records, all allegations contrary thereto and/or inconsistent therewith are denied and disputed. The contentions of the petitioner in paras 2,3, and 4 are not correct and are denied. The Government accepted the findings of both the Netaji Inquiry Committee and the

...p/5

Khosla Commission to the effect that Netaji died in an air-crash at Taihoku on 18th August, 1945. It was accordingly that the President's announcement of the award of Bharat Ratna to Netaji Subhash Chandra Bose on 23rd January, 1992 was regarded as "posthumous".

The statement made by Shri Morarji Desai, the then Prime Minister, in the Lok Sabha on 28th August 1978 did not amount to outright rejection of the conclusions arrived at by the Netaji Inquiry Committee and the Khosla Commission. Shri Desai only stated that reasonable doubts had been cast on the correctness of the conclusions reached earlier. Also, some contradictions in the testimony of witnesses had been noticed and some further contemporary official documentary records had also become available in the light of all of which it would be difficult to accept the earlier conclusions as decisive. However, Shri Morarji Desai also added that no useful purpose would be served by having any further inquiry.

As regards the alleged Third Inquiry Commission ordered by the then Prime Minister, Shri Chandrasekhar, no records are available in this Ministry.

7. With regard to paragraphs 5,6,7, and 8 of the petition, I reiterate the statements made hereinbefore. I say further that the contention of the petitioner that awarding Bharat Ratna to Netaji Subhash Chandra Bose is a dishonour, rather than an honour,

is his personal view which is incorrect. The decision to confer Bharat Ratna on Netaji Subhash Chandra Bose was taken keeping in view his relentless struggle for the independence of India and his contribution for the cause of India's freedom. It is denied that this decision was taken without any application of mind as alleged. Save as aforesaid and save what appears from the records, all allegations contrary thereto and/or inconsistent therewith are denied and disputed. Keeping in view some of the public reactions and criticisms and to avoid any unnecessary controversy, the Government decided notwithstanding the earlier announcement not to take any further action in the matter and to treat the matter as closed.

8. The statements made in paragraph 9 of the petition are parts of the history.

9. With regard to paragraphs 10, 11 and 12 of the petition I say that the Government have accepted the report that Netaji Subhash Chandra Bose died in an Aircrash on 18th August, 1945, at Taihoku. In view of this, the contentions of the petitioner are not relevant and are denied as aforesaid, and save what appears from the records all allegations contrary thereto are denied and disputed.

10. With regard to paragraphs 13, 14, 15 and 16 of the petition, I say that the contention that freedom of information should be honoured as a fundamental right is his own view and not correct. As regards information relating to the death of Netaji Subhash Chandra Bose,

...p/7

the stand of the Government has already been made clear in the statements made hereinbefore. The question of believe or not to believe such information is a matter of personal opinion of the petitioner which is not justiciable in a Court of Law. Save as aforesaid and save what appears from the records, all allegations contrary thereto and/or inconsistent therewith are denied and disputed.

11. With regard to paragraph 17 of the petition, I say that the Government had accepted that Netaji Subhash Chandra Bose died on 18th August, 1945 in an Aircrash at Taihoku. Accordingly, conferment of the award of Bharat Ratna on Netaji Subhash Chandra Bose was rightly regarded as a posthumous conferment. Save as aforesaid and save what appears from the records, all allegations contrary thereto are denied and disputed.

12. With regard to paragraph 18 of the petition, I rely on the statements made hereinbefore. I say further that with regard to the documents mentioned in the 'Transfer of Power 1942-47', these have no direct bearing on the aspect of the death of Netaji Subhash Chandra Bose. In view of the acceptance by the Government of India, the death of Netaji Subhas Chandra Bose in the air crash at Taihoku on 18th August, 1945, the question of the stay of Netaji Subhash Chandra Bose in Soviet Russia after the said period, does not arise. Save as aforesaid and save what appears from the records, all allegations contrary thereto are denied and disputed.

13. The submissions contained in paragraph 20 of the petition are wholly incorrect and denied. I am advised to submit that correct submissions will be made at the time of hearing.

14 The submissions contained in paragraphs 21, 22, 23 and 25 of the petition are incorrect and denied. I am advised to submit that correct submissions will be made at the time of hearing.

15. That the statements made in paragraphs 1, 2 and 3 are true to my knowledge and those contained in paragraphs 4, 5, 6, 7, 8, 9, 10, 11 and 12 are my informations derived from the records which information I verily believe to be true and those made in paragraphs 13 & 14 are my humble submissions to this Hon'ble Court.

Prepared in my office

Advocate

The deponent is known to me

Clerk to Mr.

Advocate.

Solemnly affirmed before me

this the 17th day of September,
1993;

Commissioner

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

C.D/C.R. No. _____ (w) of 1993

In the matter of :

an application under Article 226
of the Constitution of India.

And

In the matter of :

Bijan Ghosh. ... Petitioner

-versus-

Union of India & Ors. Respondents.

Affidavit-in-opposition, by V.P. Bhatia
affirmed this 17th day of September, 1993.

MRS. ARATI DUTTA
Advocate,
6, Old Post Office Street,
Calcutta-1.

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

~~WFO File # 811-12/93~~ TP(C) 811-12/93 (for prel.hearing)

Union of India

Petitioner (s)

Versus

S P Anand & Anr.
(with appln. for ex parte stay)

489836

Respondent (s)

With SLP (C) No.628 of 1994

Date: **17.1.94** This/these petition (s) was/were called on for hearing today.

CORAM :

Hon'ble the Chief Justice

XX

Hon'ble Mr. Justice

S. Ratnavel Pandian

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Certified to be true copy

James H. [Signature]
Assistant Forester (Judge)

..... 19/1/94 199

Supreme Court of India

For the petitioner(s) :

Mr. Dipankar P. Gupta, SG,
Mr. T.C. Sharma, Adv.
Mr. P. Parmeswaran, Adv.

For the respondent(s) :

UPON hearing counsel the Court made the following
ORDER

Transfer Petition (C) Nos. 811-12/93

Issue notice.

Further proceedings in Misc. Petition No.1400 of 1992, pending before the High Court of Madhya Pradesh Indore Bench and in Original Petition No.2110 of 1992(A), pending before the Kerala High Court shall remain stayed.

Special Leave Petition (C) No. 628 of 1994

Issue notice.

Further proceedings in C.O./C.R./No.6720 of 1993 shall remain stayed.

(Virender K. Sharma)
Court Master

of course.

(I.L. Dhingra)
Court Master

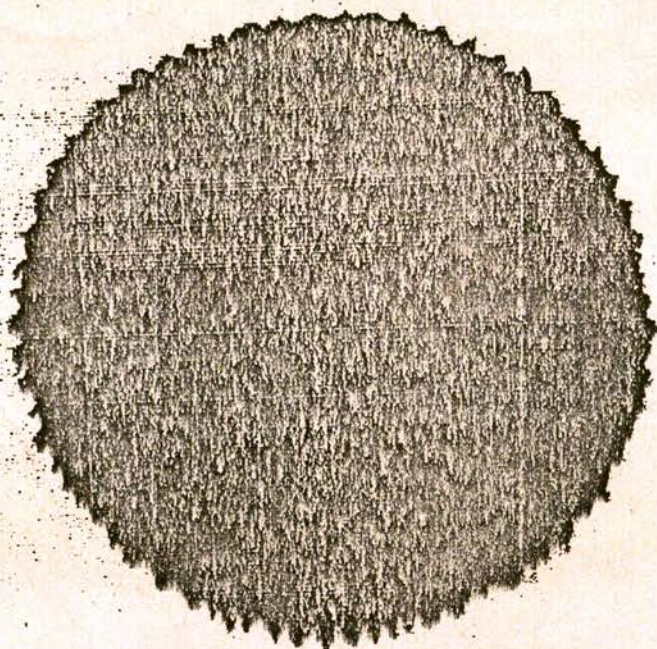
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गृह मंत्रालय

भारत सरकार

नार्थ ब्लॉक, नई दिल्ली-110001

MINISTRY OF HOME AFFAIRS

GOVERNMENT OF INDIA

NORTH BLOCK, NEW DELHI-110001

28 July, 1997

Dear Shri Parameswaran,

Subject:- SLP(C) No.628/94 with TC(C) No.7/94
and W.P(C) No.834/94 - Union of India
vs. Bijon Ghosh and Others.

Please refer to your d.o. letter dated 15th July, 1997 on the above mentioned case which may be coming tomorrow before the Supreme Court. I had requested you to arrange a discussion with the Addl. Solicitor General and you had agreed to do so. However, I have not heard anything from you.

The question of withdrawal of the Press Communiqué issued by Rashtrapati Bhavan on 23rd January, 1992 regarding the conferment of the award of Bharat Ratna on Netaji Subhash Chandra Bose was specifically considered in 1992 itself. It was decided with the approval of the then Prime Minister and President that no further action was necessary and the matter might be treated as closed. You will kindly appreciate that there can be no question of considering this issue again now. The Hon'ble Supreme Court may kindly be apprised of the position. If necessary this Ministry's file No.1/27/91-Public can be shown to the Hon'ble Supreme Court for perusal.

With regards,

Yours sincerely,

M. Venkateswara Iyer
(M. VENKATESWARA IYER)

Shri P. Parameswaran,
Addl. Govt. Advocate,
Ministry of Law, Justice & Company Affairs,
Deptt. of Legal Affairs,

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition (s) for Special Leave to Appeal (Civil / Cr.) No. (628 of 1994

(From the Judgement and order dated 6.12.93

(of the High Court of)

Calcutta in C.O.No.6720/93).

Union of India

Petitioner (s)

Versus

Bijan Ghosh and Ors.

Respondent(s)

(With appln.(s) for stay) (For final disposal)
With T.C.(c) No.7/94 and W.P.(C) No.834 of 1995)
(with office report)

Date: 29.7.97

This / These Petition (s) was/were called on for hearing today.

CORAM :

Hon'ble Mr. Justice Sujata V. Manohar

Hon'ble Mr. Justice G.B.Pattanaik

Hon'ble Mr. Justice

For the petitioner (s) : Mr. Altaf Ahmad, ASG., Mr. B. Parthasarathi,
In SLP 628 & For rr.No.1 & 2 Mr. Hemant Sharma, Mr. P. Parmeswaran, Adv.
In TC (C) No.7:

For rr.No.1 in SLP In-Person: Mr. Bijan Ghosh.

For rr.No.2 & 4: Mr. P.S. Nariman, Sr. Adv., Mr. MN.

In SLP and rr.No.4 in TC: Krishnamani, Sr. Adv., Mr. Budra Bhattacharjee,
Mr. Subhash Sharma, Adv. for Ms. Sarla Chandra, Adv.

For the Respondent(s) Petr. In WP. Mr. MN Krishnamani, Sr. Adv.,
834/95: Mr. Rajiv Kumar Singh, Adv.

For Petr. In TC 7: In-person

For rr.No.5 Mr. R.K. Singh, Adv.

For rr.No.6: In-person (Samar Guha)

UPON hearing counsel the Court made the following

For rr:

Mr. V.P. Singh - In-person.

For Intervenor: In-person.

UPON hearing counsel the Court made the following
ORDER

In SLP(C) No.628 of 1994 & TC(C) No.7 of 1994

After hearing learned counsel for the parties and respondent-
in-person the Court reserved its judgment.

In W.P.(C) No.834 of 1995

Learned counsel appearing for the petitioners states that
in view of the fact that a lot of research has gone into the
question of the circumstances surrounding the alleged death of
Netaji Subhash Chandra Bose, he proposes to take up the issue
if and when any appropriate occasion arises and hence he may be
permitted to withdraw this writ petition. The writ petition is,
therefore, allowed to be withdrawn.

(Suman Mishra)

AR-cum-PS

(Prem Lata Sharma)

Court Master

OFFICE COPY *2/13/09*
Serial No. *14*
No of Folio (s) *1/6*
Date of application for copy... *30-7-8*
Date of notifying requisite stamps...
Date of delivery of requisite stamps...
Date which the copy was ready... *6-8-07*
Date of delivery of the copy... *6-8-07*
Section Officer
Supreme Court of India

[Signature]

S.C. 198

JUDGEMENTS TODAY

1997 (7)

37. For the reasons aforementioned, the appeals as well as special leave petitions filed by the Union of India and Railway Administration are dismissed. But in the circumstances, there will be no order as to costs.

38. Special Leave Petitions Nos. 18721/1995, 4290-4307/1996, 18280/1995, 20547/1995 and 3282-83/1997 are delinked and they may be listed before the appropriate Bench.

JT 1997 (7) S.C. 198

Union of India

V

Bijan Ghosh and Ors.

Special Leave Petition (C) No. 628 of 1994.

[From the Judgment and Order dated 6.12.1993 of the Calcutta High Court in C.O.No.6720 of 1993]

WITH

Transferred Case (C) No. 7/1994

**SUJATA V. MANOHAR
& G.B. PATTANAİK, JJ.**

Dt. 04-08-1997.

APPEARANCES

Mr. Altaf Ahmad, Additional Solicitor General, Mr. B. Parthasarathi, Mr. Hemant

Sharma, Mr. P. Parmeswaran, Advocates with him for the Petitioner.

In-person for the Respondent.

Mr. F.S. Nariman, Mr. M.N. Krishnamani, Senior Advocate, Mr. Rudra Bhattacharjee, (Subhash Sharma) Advocate for Ms. Sarla Chandra, Advocate/Advocates with them for the Respondents.

V.P. Saini, in-person for the Respondent.

Awards of Bharat Ratna

Notification in I Press/55 dated 8th January 1955 - Press communique dated 23rd January 1992 conferring award of Bharat Ratna posthumously on Netaji Subhash Chandra Bose - Held after the announcement the name was not published in Gazette of India as per clause 8 and no entry made in the Register of recipients nor was any Sanad issued - An award was not conferred and proposal dropped and no further steps taken, the Court need not go into the question whether the word posthumously has been justifiably used or not - Declared that the press communique should be treated as cancelled.

HELD

In the present case, only an announcement was made by the press communication which was issued. In deference to the sentiments expressed by the public and by the members of the family of Netaji Subhas Chandra Bose, the Government of India did not proceed further to confer the award and hence the name was not published in the Gazette of

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1997 (7)

Union of India v. Bijan Ghosh and Ors.

S.C.199

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M.N.Krishnamani,
Mr. Rudra
bhash Sharma)
Sarla Chandra,
with them for the

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India, nor was it entered in the register of recipients, nor was any decoration conferred by the President by a Sanad under his hand and seal. That is why the affidavit filed on behalf of the Union of India states that the matter was closed in the sense that no further steps were taken for conferment of Bharat Ratna on Netaji Subhas Chandra Bose. Since the award has not in fact been conferred, the question of cancellation or annulment of the award under Clause 10 does not arise. Looking to the Statutes and Rules relating to the award, inter alia, of Bharat Ratna, the position as explained by the Union of India appears to be correct. In deference to the feelings so eloquently expressed in these proceedings and which were no doubt, conveyed to the Union of India, the award was, in fact, not conferred and the proposal was dropped. We need not, therefore, go into the question whether the word 'posthumously' has been justifiably used in the press communique or the wider question whether there is enough material available for reaching the conclusion that Netaji Subhas Chandra Bose died either in the air-crash of 18th of August, 1945 or at any time thereafter. This is a wider issue on which undoubtedly in future as in the past, there will be divergent views. The real controversy in these proceedings relates to the press communique. Since no further steps have been taken pursuant

Bhawan, New Delhi and was published on 23rd of January, 1992. It is to the following effect:-

"The President is pleased to confer the award of Bharat Ratna posthumously on Shri Subhash Chandra Bose."

2. On reading this press communique the sentiments of many people were hurt. The petitioner filed a writ petition in the Calcutta High Court praying, inter alia, to recall, rescind, cancel and revoke the 'Bharat Ratna' purported to be conferred on Netaji Subhas Chandra Bose posthumously by the press communique dated 22nd January, 1992 and forbea from handing over to any person o persons, institution or institutions an document or insignia or symbol containin the impugned 'Bharat Ratna' or an communication bearing reference theret for acceptance or preservation or displa or for any other purpose. The petition also prayed for a direction th respondents 1 and 2 declare fu particulars of the whereabouts of Net Subhas Chandra Bose from 18th August, 1945 till date on the basis records and information at their dispos dehors the reports and findings of t Netaji Inquiry Committee 1956 and t Netaji Inquiry Commission 1970, and institute a proper investigation into su whereabouts with a view to locating hi

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S.C. 200

JUDGEMENTS TODAY

1997 (7)

3. The petitioner has taken strong exception to the use of the word 'posthumously' in the press communique and has submitted that the Government of India has not officially accepted the alleged report of the death of Netaji Subhas Chandra Bose in an air-crash in Taiwan on 18th of August, 1945. Without any specific report of the death of Netaji Subhas Chandra Bose being accepted by the Government of India, it cannot and should not confer on him any title with the description 'posthumously'. In this connection elaborate averments have been made about the Netaji Inquiry Committee 1956 which was then constituted and the report of this Committee as also the Netaji Inquiry Commission 1970 constituted under the Commissions of Inquiry Act 1952. It is contended that a further inquiry should be held in this connection and in the absence of such an inquiry the award should not be conferred posthumously.

4. The petitioner has also raised another objection to the conferment of Bharat Ratna on Netaji Subhas Chandra Bose. It is contended that an award or a title has its own limitations. When a personality is higher and greater than any award or title, conferring of such honour on that person becomes ridiculous and it becomes an act of "carelessness" to classify such a person as an equal of others who have already been awarded such title or who may be awarded such a title in future.

5. It seems that the family members of Netaji Subhas Chandra Bose also conveyed to the Government of India their unhappiness at the announcement and

expressed their unwillingness to accept such an award.

6. In view of the sentiments expressed by the members of public and the family members of Netaji Subhas Chandra Bose in connection with the press communication, the Government of India did not proceed further in the matter. In their affidavit which is filed in these proceedings, they have stated that the matter was treated as closed. The original petitioners have expressed their anguish at this statement made on affidavit by the Government of India and have submitted that the award/press communication should be withdrawn.

7. We have heard the original petitioners and the learned advocates appearing on behalf of some of the petitioners. In order to clarify the position, Mr. Altaf Ahmad, learned Additional Solicitor General has drawn our attention to notification dated 8th of January, 1955 issued by the office of the Secretary to the President bearing No.1-Pres./55 setting out the Statutes and Rules relating to the awards of Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri. It sets out, inter alia, as follows:-

"1. The decoration shall be conferred by the President of India by a Sanad under his hand and seal.

8. The names of the persons, upon whom the decoration is conferred, shall be published in the Gazette of India and a register of all such recipients shall be maintained under the direction of the President.

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1997(7)

Union of India v. Bijan Ghosh and Ors.

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10. The President may cancel and annul the award of the decoration to any person and thereupon his name shall be erased from the Register and he shall be required to surrender the decoration and the Sanad. But it shall be competent for the President to restore the decoration and Sanad and to withdraw the orders of cancellation and annulment. The notice of cancellation or restoration in every case shall be published in the Gazette of India."

8. In order to confer the award of Bharat Ratna, it is necessary that the name of that person should be published in the Gazette of India. It is also necessary that the name of such a person should be entered in the register of such recipients maintained under the direction of the President. Clause 10 which deals with cancellation or annulment of the award requires the erasure of the name of such a person from the register. The notice of cancellation in every case is also required to be published in the Gazette of India. It is pointed out by the Additional Solicitor General that the award has to be conferred by first publishing the name of the recipient in the Gazette of India and entering it in the register of recipients. In the present case, only an announcement was made by the press communication which was issued. In deference to the sentiments expressed by the public and by the members of the family of Netaji Subhas Chandra Bose, the Government of India did not proceed further to confer the award and hence the name was not published in the Gazette of India, nor was it entered in the register of recipients, nor was any decoration conferred by the President by a Sanad under his hand and seal. That is why the affidavit filed on behalf of the Union of India states that the matter was

closed in the sense that no further steps were taken for conferment of Bharat Ratna on Netaji Subhas Chandra Bose. Since the award has not in fact been conferred, the question of cancellation or annulment of the award under Clause 10 does not arise. Looking to the Statutes and Rules relating to the award, inter alia, of Bharat Ratna, the position as explained by the Union of India appears to be correct. In deference to the feelings so eloquently expressed in these proceedings and which were no doubt, conveyed to the Union of India, the award was, in fact, not conferred and the proposal was dropped. We need not, therefore, go into the question whether the word 'posthumously' has been justifiably used in the press communique or the wider question whether there is enough material available for reaching the conclusion that Netaji Subhas Chandra Bose died either in the air-crash of 18th of August, 1945 or at any time thereafter. This is a wider issue on which undoubtedly in future as in the past, there will be divergent views. The real controversy in these proceedings relates to the press communique. Since no further steps have been taken pursuant to the press communique and the matter is treated as closed, we declare that the press communique should be treated as cancelled. With this declaration nothing further survives and the various petitions either transferred from the Calcutta High Court or filed in this Court stand disposed of.

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press communique should be treated as
cancelled. [Para 8]

ORDER

1. The proceedings which are before
us have arisen out of a press communique
which was issued from the Rashtrapati

if alive, and bringing him to India with
honour and dignity and if he is found
have died, to furnish full particulars
of his stay from 18th August, 1947
onwards and his subsequent death and
the place and manner of disposal of
mortal remains. There are various reliefs
prayed for which are connected with the

189